ADDRESSES

LE BARON BRADFORD COLT

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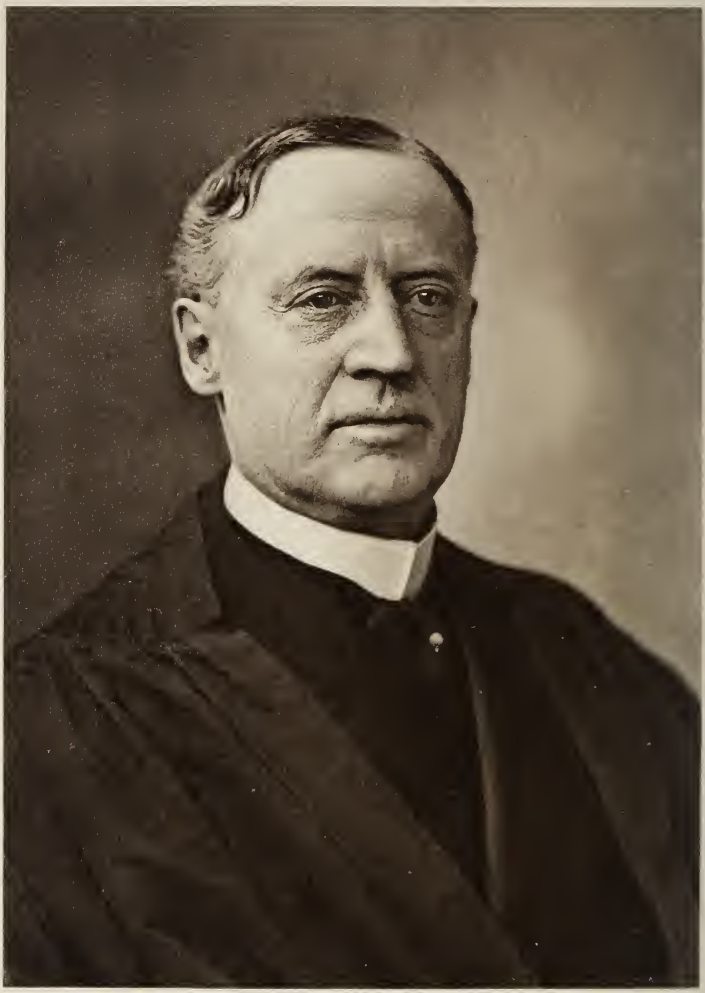

ADDRESSES

BY

LE BARON BRADFORD COLT

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CONTENTS

PAGE

JOHN MARSHALL 1

Address at the Celebration by Brown University and the Rhode Island Bar Association, February 4, 1901.

THE PROTECTION OF THE PRESIDENT OF THE UNITED STATES 45

Address before the Annual Meeting of the New Hampshire Bar Association, Concord, March 3, 1902

LAW AND REASONABLENESS 77

Address before the Annual Meeting of the American Bar Association, Hot Springs, Virginia, August 27, 1903.

CONTRIBUTIONS OF RHODE ISLAND TO THE AMERICAN UNION 109

Address at the Louisiana Purchase Exposition, St. Louis, Missouri, Rhode Island Day, October 5, 1904.

AMERICA'S SOLUTION OF THE PROBLEM OF GOVERNMENT 125

Address before the City Council and Citizens of Boston, in Faneuil Hall, July 4, 1905.

ILLUSTRATIONS

LE BARON BRADFORD COLT . . . . . *Frontispiece*

JOHN MARSHALL . . . . . *Facing page* 30

ADDRESSES

JOHN MARSHALL

Address before Brown University and the Members of the Rhode Island Bar Association on the one hundredth anniversary of the installation of John Marshall as Chief Justice of the United States, delivered in Sayles Memorial Hall, Providence, on February 4, 1901.

LADIES AND GENTLEMEN:

UPON the first meeting of the Supreme Court of the United States in the city of Washington, one hundred years ago to-day, John Marshall took his seat as Chief Justice. This day has been appropriately called "John Marshall Day," and it is a fitting time for the Bar Associations, the Courts, and the representatives of our seats of learning, assembled together, to recall the commanding and unique position the great Chief Justice occupies in our constitutional history, and to remind the people of the inestimable blessings which have flowed from his judicial labors. It is also fitting for the President of the great Federal Commonwealth, which bears the indelible impress of his genius, to request the Congress to observe with

appropriate exercises the centennial anniversary of the day he became the head of the Supreme Court and began his immortal work of upbuilding the Constitution.

It was recently said with much truth: "John Marshall yet remains the great unlaurelled hero of early American history." His work is not generally known nor fully appreciated. Such is the common fate of the highest judicial achievements. From their nature they do not attract popular attention; and yet a simple entry on the docket of the Supreme Court of the United States may affect the destiny of the nation more than Webster's reply to Hayne, or Dewey's victory in Manila Bay. We live under a government of law. Our supreme law is embodied in a written Constitution, and the judgments of the highest court on constitutional questions may involve the very existence of the Federal Union.

The life of Marshall has been called the constitutional history of the country from 1801 to 1835. He set and fixed in its proper place the keystone of the beautiful and symmetrical arch of States which now spans a continent. He carried the Constitution through its experimental and formative stages, defined its enumerated powers, and clothed them with an authority and living force commensurate with their purpose. He "gradually unveiled" the Constitution, in the words of Bryce, "till it stood revealed in the

harmonious perfection of the form which its framers had designed."

We are to-day what the Constitution as expounded by John Marshall has made us. The character and supremacy of the national government we owe largely to him. Marshall was more than the interpreter of the Constitution. He was the creator of constitutional law as applied to a written Constitution. His luminous judgments determined whether the Constitution should stand or fall. They proved the Constitution created, in the words of Chief Justice Chase, "an indestructible Union, composed of indestructible States." They demonstrated that a Federal Union strong enough to perpetuate itself, and supreme within its delegated powers, was not a menace to the independence of the States nor to individual liberty, but was the guardian and shield of both. They defined the relative rights of the States and the Federal government under the Constitution, involving often the momentous question of sovereignty — the fatal rock on which Federal Unions are broken into fragments. They settled beyond challenge or debate the question of sovereignty as a judicial question arising under the Constitution. The only right to dissolve the Union which remained with the States after these adjudications was the right of revolution. They established the novel and striking feature of our political system that the construction and interpre-

tation of the supreme law rests with the judiciary department. They vindicated the supremacy of the Constitution over all citizens and all States. They proved beyond question that the Constitution created a government, a composite republic, a nation; not a league, a compact, or a mere confederacy. They undoubtedly preserved the Union in 1861, when the attempt was made to settle constitutional questions by force of arms. Had not the judgments of the Supreme Court, during the thirty-four years Marshall was Chief Justice, established the supremacy of the Constitution as opposed to the doctrine of State sovereignty, the Civil War would have been a war of conquest, and the Federal tie forever severed. "The Southern Confederacy, as the embodiment of political ideas," says Judge Phillips, "surrendered not to Grant, not to Sherman, not to Thomas or to Sheridan, but to the statesman, the jurist and sage, — John Marshall."

The decisions of Marshall have instilled in us the worship of the Constitution. They have built up a national spirit. They have not led to the consolidation of the States, but to the consolidation of national sentiment. They are the foundation of the patriotism, affection, and pride which fill all our hearts as we look upon our country at the opening of a new century, and contemplate with emotion the proud position she occupies among the nations of the earth. They have elevated our form of government in the

eyes of the world, and disproved the judgment of mankind that a Federal Commonwealth is weak and unstable. They have shown that, in the hands of an intelligent people, such a political system may exist in a perfect form for centuries, that it may extend over a vast area, peopled by different races, and may realize under such conditions its high ideal of combining the energy, patriotism, and freedom of a small republic, with the unity, security, and power of a great empire. Speaking of Marshall's decisions in an address before the American Bar Association, Edward J. Phelps declared: "They passed, by universal consent, and without any further criticism, into the fundamental law of the land, axioms of the law, no more to be disputed. They have remained unchanged, unquestioned, unchallenged. They will stand as long as the Constitution stands. And if that should perish, they will remain, to display to the world the principles upon which it rose, and by the disregard of which it fell."

Our national government was moulded and shaped by the master hand of John Marshall. To comprehend the character and greatness of his work, it is important to understand the nature and tendency of the form of government which was organized under the Constitution. Of all political systems a Federal Commonwealth is the most complex, delicate, and elaborate. It can only exist among a highly civil-

ized people, who have been educated for generations in the art of civil government. It is an ideal government. It is founded upon a compromise between opposite political systems, and it seeks to combine the advantages of each — the freedom of a small state with the unity and security of a consolidated empire. It is an artificial system; and, inherently, it is perhaps the weakest known form of government. Based on a division of sovereignty, it is a sovereign within sovereigns, a government within governments, a single state in some things and many states in other things, a unit in its external relations and on matters which affect the general welfare, and composed of many units in its internal government. States and cities have repeatedly striven to realize the Federal idea; but, with three or four exceptions, they have been successful only in an imperfect degree, and for a comparatively short period of time. The most illustrious exception is the United States. History teaches what we should expect from the nature and artificial character of its organization, — that the ever impending danger to this political system is not consolidation, but the weakness of the Federal bond. The forces which tend to direct the States towards the central union are less strong than the forces which tend to drive them away from it, because the ties of citizenship, local interests, and a common history bind the people to the State and its autonomy.

Federal unions have always perished from the weakness of the Federal tie, or from conquest. They have never grown into a consolidated state through the destruction of the separate members of the union. It was the weakness of the Federal tie which constantly threatened the disruption of the Achaian League. And the same is true of the United Netherlands. The Swiss Confederation has never suffered from the strength of the central power, but rather from its inborn weakness. The history of our own Federal Union is familiar. We know that for three-quarters of a century after the adoption of the Constitution the grave peril, ever present, sometimes threatening, and once only averted by civil war, was disunion, not consolidation. Historians have always recognized the inherent weakness of a Federal form of government. It was not surprising, therefore, that in 1863 the eminent English historian and scholar, Freeman, after ten years of research and reflection on the subject, should have begun the publication of a work entitled "History of Federal Government from the Foundation of the Achaian League to the Disruption of the United States," in which he prophesied the exchange of ambassadors between the United States and the Confederate States before the year 1869. That Freeman never completed his work, that his prophecy proved false, was owing, in a large measure, to the constitutional decisions of Chief Justice Marshall.

Marshall's early conviction of the supreme danger which confronted the Federal Union is stated by Judge Story: "In his view the Republic is not destined to perish, if it shall perish, by the overwhelming power of the National Government, but by the resisting and counteracting power of the State sovereignties." Marshall met and overcame the danger by incorporating into the fundamental law the great fact that our Federal Constitution establishes a perpetual government complete within itself.

Constitutions grow. They do not march alone. National spirit is the product of growth. It is not a sudden creation. A national constitution, to be effective and fulfil the purpose for which it is designed, must reflect the spirit and temper of the people. The life of such a constitution is dependent on the growth of a strong national sentiment. Our Federal Constitution at the time of its adoption was a creation. It did not represent a growth. It was an experiment, a hope, a dream. The people were full of apprehension and dire forebodings as to the result. They saw the spectre of a "kingly crown," the destruction of the States, the subversion of their liberties. They had not grown up to the national idea. Their spirit and temper, their laws and governments, were colonial. Their interests and affections, their habits, prejudices, and past history, bound them to the States. The Colony or State

was their mother, the centre of their political life, and to her they owed allegiance first of all. They were citizens of Rhode Island, Massachusetts, Virginia, — not American citizens.

Twelve years before Marshall took his seat, the Constitution, in the words of John Quincy Adams, had been "extorted from the grinding necessity of a reluctant people." The popular vote was undoubtedly against its adoption. The spirit of the times is well illustrated by Patrick Henry, who exclaimed in the Virginia Convention of 1788, when speaking of the framers of the Constitution: "Who authorized them to speak the language of '*We, the people*,' instead of '*We, the States*'? States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the States." It is seen in the adoption of the Constitution by the narrow majority of three in the New York Convention, ten in the Virginia Convention, and nineteen in the Massachusetts Convention, after the most strenuous labors of its advocates, and under the pressure brought about by the annihilation of public credit, the threatened paralysis of commerce, and the impending dissolution of the Confederation. It is manifested in bitterly denouncing as unconstitutional abuses of power Washington's proclamation of neutrality in 1793 on the outbreak

of the war between England and the French Republic, and the ratification of Jay's treaty with England in 1795. It is exhibited in the statute of the State of Georgia inflicting the penalty of death on any one who should presume to enforce the process of the Supreme Court in the case of *Chisholm* v. *State of Georgia*, where the State was held liable for the payment of a private claim; and in the case of the *United States* v. *Peters*, where the Governor of Pennsylvania ordered out a brigade of militia to obstruct the service of a Federal writ.

"Not a year went by," says McMaster, "but one or more States bade defiance to the Federal government." The Virginia and Kentucky resolutions of 1798 and 1799 also bear witness to the want of national sentiment; so, in like manner, the proposed amendment to the Constitution submitted by John Randolph: "The Judges of the Supreme Court and all other Courts of the United States shall be removed by the President on the joint address of both houses of Congress." The same state of public feeling is indicated in the popular revulsion against the Federalists which soon swept that party out of power, and later out of existence, and installed the opposition, then known as the Republican party, thirty days after Marshall became Chief Justice.

For thirty-four years Marshall's decisions vindicated the necessity and value of the Constitution.

They incorporated the national idea into the fundamental law, and they have been a most potent factor in the development and promotion of the intense national spirit which now pervades the country.

Marshall's soul was filled with the spirit of the Constitution, — the soul of the patriot and statesman as well as jurist. He loved the Constitution. It was his life. His judgment and affections bound him to it. His great intellectual powers were devoted to it. He studied and mastered it. It was his constant practice to read and re-read it. He knew its scope and purpose, its strength and weakness, its powers and limitations, its checks and balances. He was with it at its creation. He had stood by its cradle. He had followed its history. He realized the struggles and sufferings which preceded its birth, and the ruin which was involved in its fall. As he wrote those masterpieces of judicial reasoning, there seems ever present to his mind the beautiful and stately preamble:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

At the same time his thoughts must have carried

him back to the struggles of the Revolutionary War in which he participated, — to Brandywine, Germantown, and the blood-tracked snows of Valley Forge; to his efforts in the Virginia legislature to secure a more efficient Federal government; to his exertions in the convention of his own State in behalf of the adoption of the Constitution; to his triumphant defence of Washington's administration in the Virginia legislature; to the insults heaped upon the weakness of his country by Talleyrand during his mission to France; to his supreme effort at a critical time in sustaining the rightful authority of the executive in the Congress of 1799, — these and other great events in which he took part must have crowded upon his memory, animated his whole being, and deepened his conviction that the Constitution should be interpreted in the spirit of the preamble, and so secure to the people the blessings of liberty and a perpetual Union.

The Constitution was the outcome of mutual concessions and many compromises. It was offered to the people of the several States for ratification as the best result attainable. It was regarded by the advocates of a strong Union as too weak, and by those of a weak Union as too strong. "Nobody liked all its provisions, and everybody feared some of them." It was adopted by its framers in a spirit of harmony and patriotism, and lest their efforts might

prove fruitless. The general sentiment of the Convention finds expression in the words of the venerable Franklin: "I agree to this Constitution with all its faults — if they are such — because I think a general government necessary for us. I consent to this Constitution because I expect no better, and because I am not sure it is not the best. The opinions I have had of its errors I sacrifice to the public good."

The wisdom, ripe experience, lofty patriotism, and constructive powers of that remarkable body of men who framed the Constitution, and the greatness of their work, are universally recognized; but it is equally true that the instrument as it left their hands was not a finished and complete work. The Constitution is not merely the work of the framers, says Mr. Bryce, "but the work of the judges, and most of all of one man, the great Chief Justice Marshall." It was designed as the framework of a comparatively novel form of government, and not as a complete code of laws. It was a skeleton, and the heart and brain and nerves to make it a living organism were in a large degree supplied by Marshall's construction and interpretation. The powers enumerated are brief. They are broad in scope and expressed in general terms. Much was necessarily left to implication, and much was designedly omitted. This resulted from the jealousy of the States

and the fear of consolidation or despotism. The framers realized that if all the powers essential to accomplish the great purposes of the instrument had been fully set out it probably never would have been ratified. Had the Constitution contained a provision that the Supreme Court should be the final judge of the fundamental law and of its own jurisdiction, with the power to nullify an Act of Congress or a State statute, its adoption would have been extremely doubtful. It was admitted at the time that its success or failure depended upon its construction. This was the great work which fell to Marshall, and the saying is true: "He made of us a nation by construction."

The fame of Marshall rests largely upon his judicial judgments adjusting the relative powers of the Federal government and the States, under the Constitution. The settlement of these rights has always been the battle-ground of Federal unions and a menace to their perpetuity. It was this irrepressible conflict which nearly wrecked the Confederation, which divided the convention that framed the Constitution, and constantly imperilled that instrument after its adoption. The people under a Federal system are always divided into two great political parties: those who favor and those who oppose a strong central authority; those who believe such authority is indispensable to the maintenance of a

permanent Union and free institutions, and those who believe it dangerous to the rights of the States and to individual liberty. Marshall referred to this when he wrote: "The country was divided into two great political parties, the one of which contemplated America as a nation, and labored incessantly to invest the Federal head with powers competent to the preservation of the Union; the other attached itself to the State governments, viewed all the powers of Congress with jealousy, and assented reluctantly to measures which would enable the head to act in any respect independently of the members." Since it is the verdict of history that the danger to the rights and independence of the States and to the freedom of the people from the encroachments of the central authority does not exist under a Federal system, Marshall showed consummate wisdom and statesmanship in so adjusting by judicial construction the relative powers of the Federal government and the States as to secure the supremacy of the Constitution and a permanent Union.

The new government had been organized only a short time when the momentous questions of constitutional construction endangered its stability and existence.

Did the Constitution establish a sovereign nation, or a mere compact between sovereign States? Is the Federal government the final judge of the extent of

the powers granted under the Constitution? Is the Supreme Court the sole judge of its own jurisdiction, and is it authorized to declare what the supreme law is? Did the Constitution establish an efficient and permanent government, or is the Constitution, in the words of Marshall, only "a solemn mockery," "a magnificent structure, indeed, to look at, but totally unfit for use"? Is it, as Pinkney exclaimed in *McCulloch* v. *Maryland*, "a competent guardian of all that is dear to us as a nation," or is it "a mere phantom of political power, a pageant of mimic sovereignty"?

The supremacy of the Constitution was attacked in many ways. It was insisted that the Constitution did not destroy, as an ultimate question, the sovereignty of the States. The Supreme Court is not the judge of its own jurisdiction, because that would make it sovereign. It might be a convenient agency in the government, but it is inconsistent with the nature of sovereignty that a sovereign State should submit to its judgments. This would make the agent the master, and the Supreme Court would become a menace to the States. There exists no supervisory power in the Supreme Court to revise the action of a sovereign State. It has no right to nullify the legislative act of a State. It has no power to declare void an Act of Congress, because, under the Constitution, the government is organized into co-ordinate departments of

equal authority. The powers expressly granted to Congress and the prohibitions imposed on the States, under the Constitution, should receive a strict construction. The power of Congress to make all necessary and proper laws to carry into effect the powers granted by the Constitution should not be expanded by implication to cover other powers not specifically enumerated.

The answers to these and other contentions are found in Marshall's decisions, and they are embraced in certain fundamental conclusions: The Constitution organizes a government complete within itself. It establishes a perpetual Union and is the guardian of the rights of the people. For these great purposes the powers conferred by that instrument are sufficient. Under the Confederation the central authority exerted its action upon sovereign States, and they were not compelled to obey its mandates. Under the Constitution the Federal powers are exerted directly upon the people, and they establish a government, as distinguished from a mere confederation, with the usual powers of a government, and organized into different departments. The Constitution does not limit the exercise of Federal power to strictly Federal subjects, but goes beyond, and by its prohibitions upon the States shields the personal rights of the individual. Sovereignty in the United States resides in the people. It does

not rest, as in England, with Parliament, or with the sovereign ruler, as in many European countries. The people have surrendered a portion of their sovereignty in the form of a written Constitution, and the people only can revoke, alter, or amend their own supreme law. The national authority is conferred and measured by the Federal Constitution, and "prescription cannot aid it, nor precedent enlarge it." The Constitution is the supreme law of the land, and as such is supreme over all citizens and over State authority. The reserve powers of the States cannot stay the operation of the supreme law.

The Union being perpetual, it cannot be dissolved by a part of the States or by the people of those States. The Federal government is the final judge of the nature and extent of its powers under the Constitution. The Supreme Court is the judge of its own jurisdiction and of what the law is. It may nullify an Act of Congress or of a State, and it has a supervisory power over the judgments of the highest courts of a State where a constitutional question is involved. There are also implied powers in the Constitution, and if the end be legitimate, the means appropriate to that end, when not prohibited, are constitutional, if within the spirit and scope of that instrument.

Such were some of the principles of construction applied to the Constitution in Marshall's decisions,

which, for lucid and cogent reasoning, power of analysis, comprehensiveness, and broad generalization, have never been surpassed. They cover the great underlying problems of constitutional interpretation. They deal with the questions of the powers granted to Congress, the reserved powers of the States, and the restrictions imposed upon the States by the expressed and implied powers of Congress.

Marbury v. *Madison* was one of Marshall's earlier and most famous decisions. It was there held that the Constitution is the supreme law, that an Act of Congress repugnant thereto is void, and that the Supreme Court is the final judge of the fundamental law.

"The question," said the Chief Justice, "whether an act repugnant to the Constitution can become the law of the land is a question deeply interesting to the United States. . . . That the people have an original right to establish, for their future government, such principles, as in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. . . . This original and supreme will organizes the government, and assigns to different departments their respective powers. . . . The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to

alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature repugnant to the Constitution is void.

"This theory is essentially attached to a written constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society. . . . It is emphatically the province and duty of the judicial department to say what the law is. . . . This is of the very essence of judicial duty. . . . Those then who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the legislature shall do what is expressly forbidden, such act, notwithstanding the

express prohibition, is in reality effectual. . . . It is prescribing limits, and declaring that those limits may be passed at pleasure.

"That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written Constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction."

It was by such unanswerable reasoning that Marshall reached his conclusions.

In *United States* v. *Peters*, where the question arose of the power of a State by statute to disregard a judgment of the Supreme Court, the Chief Justice declared:

"If the legislatures of the several States may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals."

The power of the Supreme Court to review the judgment of the highest court of a State, where a constitutional question is involved, was affirmed in *Cohens* v. *Virginia*. In his great opinion in that case, the Chief Justice observed:

"The questions presented to the Court by the first

two points made at the bar are of great magnitude, and may be truly said vitally to affect the Union. They exclude the inquiry whether the Constitution and laws of the United States have been violated by the judgment which the plaintiffs in error seek to review; and maintain that, admitting such violation, it is not in the power of the government to apply a corrective. They maintain that the nation does not possess a department capable of restraining peaceably, and by authority of law, any attempts which may be made by a part, against the legitimate powers of the whole; and that the government is reduced to the alternative of submitting to such attempts, or of resisting them by force. They maintain that the Constitution of the United States has provided no tribunal for the final construction of itself or of the laws or treaties of the nation; but that this power may be exercised, in the last resort, by the Courts of every State in the Union. That the Constitution, laws, and treaties may receive as many constructions as there are States; and that this is not a mischief, or, if a mischief, is irremediable. . . . If such be the Constitution, it is the duty of the Court to bow with respectful submission to its provisions. If such be not the Constitution, it is equally the duty of the Court to say so; and to perform that task which the American people have assigned to the judicial department." After quoting Article 6 of the Constitution, which

declares that the Constitution, laws, and treaties shall be the supreme law of the land, the opinion proceeds: "This is the authoritative language of the American people; and, if the gentlemen please, of the American States. It marks, with lines too strong to be mistaken, the characteristic distinction between the government of the Union and those of the States. The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution; and if there be any who deny its necessity, none can deny its authority. . . . A Constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests; and its framers must be unwise statesmen, indeed, if they have not provided it, as far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter. . . . The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will. But this supreme and irresistible power to make or to unmake, resides only in the whole body of the people; not in any subdivision of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated their power of repelling it."

This opinion, which is tinged with patriotic emotion, points out the primary and elemental principles on which the Constitution rests.

McCulloch v. *Maryland* is a notable decision. The case involved the power of the government to establish a bank, as an implied power under Article 1, Section 8, giving Congress power to make all necessary and proper laws for carrying into execution the powers vested by the Constitution in Congress or in the government. The power was affirmed by the Chief Justice. "We admit," he said, "and all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Another great question decided in that case related to the power of a State to tax a bank established by the government. On this point the Chief Justice declared:

"That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. . . . If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument."

The necessity of uniform regulations of commerce was the most powerful cause which led to the adoption of the Constitution. The construction of the commerce clause in that instrument came under consideration in *Gibbons* v. *Ogden*. The State of New York had granted to Fulton and Livingston the exclusive right to navigate all the waters of New York with vessels propelled by steam. This right had been assigned to Ogden, the original plaintiff. The highest court of New York had restrained the original defendant, Gibbons, from navigating the Hudson River with steamboats licensed under an Act of Congress. The State law was held void. "Commerce," said the Chief Justice, "undoubtedly, is traffic, but it is something more: it is intercourse. . . . All America understands, and has uniformly understood, the word 'commerce' to comprehend

navigation. . . . The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. . . . This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . The power of Congress, then, comprehends navigation within the limits of every State in the Union; so far as that navigation may be, in any manner, connected with 'commerce with foreign nations, or among the several States, or with the Indian tribes.' . . .

"Powerful and ingenious minds, taking, as postulates, that the powers expressly granted to the government of the Union are to be contracted by construction into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well digested but refined and metaphysical reasoning, founded on these premises, explain away the Constitution of our country, and leave it a magnificent structure, indeed, to look at, but totally unfit for use."

In *Canter* v. *The American Insurance Company*, where the validity and effect of the treaty of 1819, by which Spain ceded Florida to the United States, was before the Court, the Chief Justice said: "The Con-

stitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."

Marshall was not in favor of a narrow construction of the Constitution, nor of an enlarged construction beyond the natural meaning of the words. Upon this general question he observed, in *Gibbons* v. *Ogden:*

"What do the gentlemen mean by a strict construction? If they contend only against that enlarged construction which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the Constitution is to be expounded. . . . The enlightened patriots who framed our Constitution, and the people

who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule, that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction."

This occasion will not permit a more extended reference to Marshall's opinions. It is sufficient to observe that they constitute in a large measure the judicial structure of the nation.

When we speak of the Supreme Court decisions on constitutional questions as those of Marshall, we are doing no injustice to the other members of the Court. His master mind directed and governed that tribunal on this subject. This was the verdict of his contemporaries. In dedicating his "Commentaries on the Constitution" to Marshall, Judge Story wrote: "Other judges have attained an elevated reputation by similar labors in a single department of jurisprudence. But in one department (it need scarcely be said that I allude to that of constitutional law) the common consent of your countrymen has admitted you stand without a rival. Posterity will surely confirm by its deliberate award what the present age has approved as an act of undisputed justice."

Of the six decisions involving questions of constitutional law from the organization of the Court in 1790 to Marshall's appointment in 1801, only two were of grave importance. From 1801 to 1835, covering the period Marshall was Chief Justice, sixty-two decisions on constitutional questions were given, in thirty-six of which the opinion of the Court was written by him. Although this was his most important work, it comprises only a fraction of his judicial labors. In the thirty volumes of reports extending from the first of Cranch to and including the ninth of Peters, there are eleven hundred and six cases in which opinions were filed, and five hundred and nineteen of these were delivered by Marshall. These opinions cover questions on nearly every important branch of jurisprudence. The case of *Ogden* v. *Saunders* was the only case raising a constitutional question where the majority of the Court differed from the Chief Justice.

In the department of constitutional law, the field was new. There were few precedents, because the construction and declaration of the supreme law by a court, under a written constitution, was unknown. Marshall's only light was the inward light of reason. He had "no guides but the primal principles of truth and justice." He does not cite a single decision on the great constitutional questions deter-

mined in *Marbury* v. *Madison*, *Cohens* v. *Virginia*, *Sturges* v. *Crowninshield*, *McCulloch* v. *Maryland*, and *Dartmouth College* v. *Woodward*. Judge Story said: "When I examine a question, I go from headland to headland, from case to case; Marshall has a compass, puts out to sea, and goes directly to his result." Tradition records (we will not say truthfully) that when Marshall had finished reading his great opinions, he would sometimes observe: "These seem to me to be the conclusions to which we are conducted by the reason and spirit of the law. Brother Story will furnish the authorities."

Marshall's decisions are demonstrations founded upon pure reason. They are chains of compact reasoning leading to inevitable conclusions. They are almost devoid of illustration or analogy. They show profound meditation and deep penetration. They grapple with great underlying principles, and exclude extraneous circumstances. In the words of a contemporary: "When we regard their originality, their depth, their clearness, and their adamantine strength, we look upon them as the highest efforts of the human mind." Webster declared: "When Judge Marshall says, 'It is admitted,' — Sir, I am preparing for a bomb to burst over my head and demolish all my points." After hearing Marshall deliver several opinions, William Pinkney exclaimed: "He was born to be the Chief Justice of any country in which he

lived." And John Adams said that his gift of John Marshall to the United States was the proudest act of his life.

When Marshall, at the age of forty-five, was appointed Chief Justice, he had been engaged in the leading events of his time. His previous life was a training and preparation for the high office he then assumed. He was already distinguished as a patriot, lawyer, legislator, statesman, and diplomatist; and, soon after he became Chief Justice, his "Life of Washington" was published.

Born on September 24, 1755, in Germantown, Fauquier County, Virginia, his early youth was passed in a sparsely settled country thirty miles west, near the Blue Ridge Mountains. His father was a friend and companion of Washington; a colonel in the Revolutionary Army; a man of marked courage and energy, and well read in the English classics; and he was deeply interested in the education of his children.

In his youth Marshall was fond of out-door sports. He loved nature, and poetic longings filled his soul. He early showed a taste for literature, which he retained throughout his life. Two years' instruction in Latin comprised his education, except what was obtained at home.

When the storm of the Revolutionary War broke upon the Colonies, the youthful spirit of Marshall

burned with patriotic zeal. Abandoning his studies, he formed a company. He was made lieutenant and afterwards captain; and he remained with the army, except for a short period, until the end of the war. "He fought," says a recent writer, "at the battles of Brandywine, Germantown, and Monmouth. He was with Mad Anthony Wayne at Stony Point. He was with Lighthorse Harry Lee in the brilliant action at Paulus Hook. He suffered hardships with the patriot army in the winter encampment upon the impregnable heights of Morristown. He was with his great commander during the dreary midnight of the Revolution at Valley Forge. In all his military service he was steadfast, capable, and valiant."

At the age of twenty-five, after attending a course of lectures by Chancellor Wythe at William and Mary College, Marshall was admitted to the bar, and rose rapidly to eminence. The same qualities which afterwards distinguished him as a judge marked his career as a lawyer. Calmness, moderation, penetration, and mental grasp characterized his forensic arguments. In describing Marshall's powers, William Wirt declared that he possessed "one original and almost supernatural faculty, — the faculty of developing a subject by a single glance of his mind, and detecting at once the very point on which every controversy depends. No matter what the question,

though ten times more knotty than the gnarled oak, the lightning of heaven is not more rapid nor more resistless than his astonishing penetration." It was not long before he ranked first among the leaders of the bar in his native State. The two volumes by Washington of the cases adjudged in the Virginia Court of Appeals disclose his name as counsel in a large majority of the cases reported.

His professional reputation became national in the celebrated case of *Ware* v. *Hylton*, known as the English Debt case, which raised the question whether, under the treaty of peace of 1783, British creditors could recover debts sequestrated during the Revolutionary War by act of the Virginia legislature. The honor of the State and the fortunes of many of its citizens were involved in the issue. The case was argued before the Supreme Court in Philadelphia in the winter of 1796. There were engaged in it the most learned and eloquent members of the Virginia bar, which at that time was said to rank first in the country. Marshall appeared as leading counsel for the defendants; and, although on the losing side of the case, his masterly argument excited the admiration of the Court and the bar.

Speaking of Marshall's effort, Wirt says: "Marshall spoke, as he always does, to the judgment merely, and for the simple purpose of convincing. Marshall

was justly pronounced one of the greatest men of the country. He was followed by crowds, looked upon and courted with every evidence of admiration and respect for the great powers of his mind. Marshall's maxim seems always to have been, 'Aim exclusively at strength.'"

Marshall's career as a legislator was a school and training for his great work of expounding the Constitution. He was a member of the Virginia legislature for several years following the close of the Revolutionary War and before the adoption of the Constitution in 1789. Questions of the highest importance and statesmanship occupied the attention of the legislature during this period. The Articles of Confederation had proved entirely inadequate for the purposes of an efficient government. The requisitions of Congress were ignored, and the disruption of the Confederation was imminent. On all the important political questions then pending before the legislature, Marshall stood with Madison in pleading for a stronger and more effective Federal union. The bitter and cruel experience of the Colonies during these years made a deep impression on his mind, which he could not afterwards cast aside when called upon to determine the grave questions affecting the supremacy and efficiency of the new Constitution.

Marshall was a delegate to the Virginia Convention of 1788, to which was submitted the question of

the ratification of the Constitution. The Convention was composed of the most eloquent and illustrious body of men ever gathered together in the State. Marshall and Madison, by their supreme exertions, were hardly able to stem the fiery eloquence of Patrick Henry and the powerful arguments of Grayson and George Mason in opposition. In his forcible speech of June 10, 1788, in reply to Patrick Henry, Marshall answered the various objections urged against the Constitution. He begins with a calmness, moderation, and judicial temper which mark the entire speech. "I conceive that the object of the discussion now before us is whether democracy or despotism be most eligible. I am sure that those who framed the system submitted to our investigation, and those who now support it, intend the establishment and security of the former. The supporters of the Constitution claim the title of being firm friends of the liberty and the rights of mankind. They say that they consider it as the best means of protecting liberty. We, sir, idolize democracy. Those who oppose it have bestowed eulogiums on monarchy. We prefer this system to any monarchy, because we are convinced that it has a greater tendency to secure our liberty and promote our happiness. We admire it, because we think it a well-regulated democracy."

The acts of Washington's administration after the new government was organized were bitterly

denounced. The ratification of Jay's Treaty with England in 1795 excited intense opposition. Constitutional objections to the treaty were raised and supported by powerful arguments. The memorable speech of Marshall in the Virginia legislature, in defence of the constitutional power of the executive to negotiate commercial treaties, raised him into national fame as a statesman, and placed him among the foremost leaders of the Federal Party.

As an indication of the popular feeling of the time, it may be noticed that, upon the presentation in the legislature of a resolution expressing confidence in the "virtue, patriotism, and wisdom" of Washington, a motion to strike out the word "wisdom" was defeated by a bare majority. "Will it be believed," exclaimed Marshall, "that the word was retained by a very small majority? A very small majority in the legislature of Virginia acknowledged the wisdom of General Washington."

It was about this time that Washington tendered Marshall the office of Attorney-General and the mission to France, both of which he declined.

In consequence of Jay's Treaty with England, our relations with the French Republic had reached a critical stage; and, from a sense of patriotic duty, Marshall finally accepted the appointment of Envoy to France in conjunction with Pinckney and Gerry. During this trying and humiliating mission the letters

addressed to Talleyrand defining and defending our country's position have always been attributed to Marshall's pen. They aroused the warmest praise, and on his return in 1798 he received ovations in New York and Philadelphia.

Upon resuming the practice of his profession in Virginia, at the earnest solicitation of Washington, who was filled with dark forebodings as to the future of the country, Marshall became a candidate for Congress, after declining a position on the Supreme Court tendered him by President Adams. He was elected in the spring of 1799. Hardly had he taken his seat a few months later, when he was called upon to announce the death of Washington. "Those who were present on the occasion," says Binney, "can never forget the suppressed voice and deep emotion with which he introduced the subject on the following day; or the thrill which pervaded the House at the concluding resolution."

On questions which related to the Constitution, Marshall was the acknowledged leader of the House. The most notable debate in this Congress was upon the resolutions of Edward Livingston, censuring the President for his conduct in the extradition of Jonathan Robbins. This executive interference was violently attacked as an unconstitutional exercise of power. The speech of Marshall in reply to Livingston, in the language of Judge Story, "settled then

and forever the points of national law upon which the controversy hinged," and "is one of the most consummate juridical arguments which was ever pronounced in the halls of legislation."

During this term of Congress Marshall was tendered the office of Secretary of War, which he declined; and subsequently, the office of Secretary of State, which he accepted. The latter position brought before him our relations with foreign countries, and especially with England. His State papers upon the various questions arising out of the execution of the British Treaty, which had threatened to interrupt the peaceful relations of the two countries, were strong, dignified, and diplomatic.

While serving as Secretary of State he was nominated by President Adams for Chief Justice; his nomination was unanimously confirmed by the Senate; and he was commissioned January 31, 1801. He took his seat on February 4, to enter upon a career the most remarkable in judicial annals.

Marshall possessed intellectual powers of the highest order. The commanding features of his mind were calmness, penetration, and profound wisdom. In judicial acquirements he was not the equal of some of his contemporaries. He was not what is termed a learned man, and he had none of the arts of an advocate. He relied upon the original powers of his mind, and not upon knowledge gained from others.

He worked out the great problems of constitutional jurisprudence as Newton worked out the great problems of natural science. He mastered new subjects by his powers of analysis and intuitive perception of the truth. "He seized, as it were by intuition," says Judge Story, "the very spirit of juridical doctrines, though cased up in the armor of centuries; and he discussed authorities, as if the very minds of the judges themselves stood disembodied before him."

Marshall's moral nature was in harmony with his intellectual. His affections were strong and pure. His character was spotless. It is said he never had an enemy. The affectionate regard which bound others to him in his youth, and during his long public career, became, towards the closing days of his life, an exalted veneration. His nature was marked by deep sensibility and tenderness. Speaking of his domestic virtues, Judge Story, in his beautiful eulogy, declares: "After all, whatever may be his fame in the eyes of the world, that which in a just sense was his highest glory was the purity, affectionateness, liberality, and devotedness of his domestic life. Home, home, was the scene of his real triumphs."

Though distinguished for moderation and good temper, he was immovable in his performance of judicial duty. The trial of Aaron Burr is an illustration of his firmness and impartiality under the most

trying circumstances. The country was convinced of Burr's guilt, and Marshall's rulings were severely censured. "Marshall," exclaimed Wirt, "has stepped in between Burr and death." But the great Chief Justice stood unmoved while the storm of passion and prejudice raged about him. The English law of treason, he declared, had not been imported into the Constitution. Treason under the Constitution consists in some overt act, and it is not treason for the subject to "imagine the death of the King." Marshall's deepest feelings were aroused in this memorable trial. Listen to these words: "That this Court dares not usurp power is most true. That this Court dares not shrink from its duty is not less true. No man is desirous of placing himself in a disagreeable situation. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom. But if he has no choice in the case; if there is no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country who can hesitate which to embrace."

When the question was put to Wirt after the trial, "Why did you not tell Judge Marshall that the people of America demanded a conviction?"

"Tell *him* that!" was the reply. "I would as soon have gone to Herschel, and told him that the people of America insisted that the moon had horns as a reason why he should draw her with them."

Marshall's personal traits were winning. Nothing seemed to disturb his temper or equanimity. His manners on the bench were a model of dignity, simplicity, and courtesy. He heard the arguments of counsel with unsurpassed patience and strict attention. "The gravity of the judge was tempered with the courtesy of the gentleman."

An English traveller gives us a touching picture of the Chief Justice during his last days: "The Judge is a tall, venerable man, about eighty years of age, his hair tied in a queue according to olden custom; and with a countenance indicating that simplicity of mind and benignity which so eminently distinguish his character. His house is small, and more humble in appearance than those of the average successful lawyers or merchants. I called three times upon him. There was no bell to the door. Once I turned the handle of it and walked in unannounced. On the other two occasions he had seen me coming and had lifted the latch and received me at the door, although he was at the time suffering from some very severe contusions received in the stage while travelling on the road from Fredericksburg to Richmond. I verily believe there is not a

particle of vanity in his composition." Such was the man, simple, kindly, great — the noble attributes of true manhood.

Perhaps no tribute after his death is more beautiful than is expressed in the words: "The fame of the Chief Justice has justified the wisdom of the Constitution, and reconciled the jealousy of freedom to the independence of the judiciary."

The affection and veneration of the bar are feelingly shown by the resolutions adopted by the Circuit Court of Virginia, which declare that he had presided for thirty-five years "with such modesty that he seemed wholly unconscious of his own gigantic powers; with such equanimity, such benignity of temper, such amenity of manners, that not only none of the judges who sat with him on the bench, but no member of the bar, no officer of the court, no juror, no witness, no suitor, in a single instance, ever found or imagined, in anything said or done, or omitted by him, the slightest cause of offence."

The providence of God has been made manifest to this nation "in raising up from time to time men of pre-eminent goodness and wisdom," — Washington, Lincoln, Marshall, each fitted for his special work. The name and services of Marshall are less known because what he did lies more hidden from the eyes of men. But it only requires examination

and reflection to reveal the incalculable value of his labors, and his title to the gratitude of his country. In the beautiful emblem of the nation which hangs from these historic walls it was by his hand the silken threads were woven into the folds in which are set and held forever those shining stars.

To comprehend Marshall's work we must stand upon the mountain top and survey the nation; its cluster of proud States stretching from ocean to ocean; its groups of islands encircling the sea; its strings of great cities; its countless towns and villages, farms and homes; its temples of worship on every hillside, whose spires are the first to greet the morning sun at his coming; its schools and universities; its hospitals and charities; its commerce and arts; its science and invention; its industries and wealth, — the whole picture of national life which is spread before our vision.

Behold the change! We are no longer a feeble confederation of colonies fringing the Atlantic coast; but a mighty composite Republic standing in the front rank of nations, beckoning the poor and heavy-burdened of other climes to this home of material comfort, civilization, and orderly liberty; and marching to the financial and commercial supremacy of the world. Our political system is no longer threatened by discordant or belligerent States, but we behold a loyal, united, and enduring Union, — the highest

type of government, a Federal Commonwealth in its perfect form. We see no longer a weak and struggling national spirit, but the throb of seventy million patriotic hearts as the Maine sinks beneath the waters in Havana's harbor. The symbol of our country's power is no longer the frigate Constitution, or the wooden ships of Perry built in a night to cross an inland sea, but the majestic and invincible Oregon, traversing two oceans from Pacific's Golden Gate to battle for the oppressed of other lands and the nation's honor.

As we enter the gateway of a new century with hearts overflowing with gratitude to Almighty God for our unnumbered national blessings, and awaiting with high anticipation and conscious strength the grander destiny of the coming years, we may well pause to lay our wreath of laurel on the uncrowned head of the great jurist who set deep and immovable the constitutional pillars on which the nation rests.

THE PROTECTION OF THE PRESIDENT OF THE UNITED STATES

Address delivered before the New Hampshire Bar Association at their Annual Meeting at Concord on March 3, 1902.

Mr. President and Members of the
New Hampshire Bar Association:

A SOLEMN and imperative duty has fallen upon the country: the protection of the President of the United States. The subject is of the gravest public concern, and of peculiar interest to our profession.

It is a startling commentary on our vaunted intelligence, progress, and security, that we are unable to guard the life of one individual in this country, and he the most honored and best beloved. With millions of men, as our recent experience revealed, ready to rise at a moment's warning in defence of the Republic; with boundless resources; with armies and navies and all the appliances of modern warfare at our command; fearing not, in our conscious strength, the attack of any foreign foe; standing proud, erect, and invincible before the world, — we still see our Chief Magistrate shot down with the same ease that a highwayman would shoot down a

defenceless traveller on the public way. Something must be wrong somewhere.

There is no conceivable crime so atrocious as the causeless murder of the chosen ruler of a free people. Such crimes rise infinitely higher than crimes against the individual. They are crimes against humanity, civilization, and the country's life; against society, law, and liberty. They are a blot upon free institutions, a stain upon the flag. They undermine the happiness and well-being of the people. They lower our standing and character in the opinion of mankind. They are blows aimed at the Presidency and self-government; at the town-meeting, the State, and the nation; at all our institutions, and everything which finds expression in the words "Our Country."

Has our fancied security indeed proved a dream and a delusion? Has our boasted liberty become the liberty of assassination? Is this the end of the struggles, the sacrifices, the aspirations of the people for self-government? Is this the consummation of the long, weary, and bloody march of mankind to this fair land of freedom?

The record is appalling. In thirty-seven years three Presidents have been assassinated, an average of one assassination every twelve years. The world will surely hesitate to imitate our example of a true democracy if this record be long continued. The history of Europe for a thousand years furnishes

no parallel. To find one we must go back to the military usurpers of ancient Rome.

During these comparatively few years the assassinations of our Chief Magistrates have equalled, if not exceeded, those of the rulers of England since the Norman conquest in 1066, and of France during the last ten centuries. No king of England has been assassinated for more than four hundred years, and but one ruler of France in nearly three centuries.

During the life of the Federal government, a period of one hundred and thirteen years, no ruler of England, Germany, or Spain has suffered death by violence; France, Italy, and Austria have each escaped with a single victim, while Russia records but two instances.

This comparison becomes the more amazing when we consider that tyrannicide, regicide, and religious fanaticism have been among the principal causes leading to the assassination of European rulers, and that these causes have not existed here. Nor can this striking contrast be explained by reference to latter-day anarchism, for at most only one of the four attempts upon the lives of our Presidents can be traced to that cause.

This country stands arraigned before the judgment-seat of civilized nations to account, if possible, for these tragedies, and to atone for them by the adoption of the best remedial measures which can be devised.

We know that complete immunity from this form of assassination is impossible, but the risk should be reduced to a minimum. There must at least be an abatement in the frequency of these national crimes.

We can no longer plead in justification our supreme faith in a free people and democratic institutions as a shield against such attacks; nor our belief that no one could be found to strike down the citizen chosen by the will of the people to administer their own laws by acting for a short time as their Chief Magistrate. Nor can we plead that we could comprehend the assassination of the Czar of Russia because he was the State, or the assassination of the King of Italy because he was born king, or the assassination of any ruler where justice was denied the people and irreparable political and social grievances existed; but that it was impossible for us to imagine how any human being should wish to murder Lincoln or Garfield or McKinley, who sprang from the people, whose lives were consecrated to their happiness and well-being, and who died "holy victims sacrificed on the altar of liberty." We must now acknowledge our experience has shown that the freest government, administered by the most exalted characters, is not exempt from this form of assassination.

Nor can we insist upon the violence of party spirit inherent in a democracy as the cause, and cite as examples Athens, Venice, and Florence, because party

struggles will not account for the frequency of these catastrophes; and, further, our political institutions and social conditions are quite unlike those of any ancient or mediæval republic.

Nor will it do to urge too strongly in defence the inadequacy of our laws, either punitive or preventive, because it appears that the would-be assassin of President Jackson was speedily tried by a jury and found to be insane; that the assassin of President Lincoln was quickly traced to his hiding-place and shot to death while resisting arrest; that the assassin of President Garfield was tried, convicted, and executed; and that the murderer of President McKinley met quick retributive justice under the law. So likewise, with respect to preventive legislation, it may be said that a volume of such laws would have had no deterrent effect upon the insane Lawrence or the conspirator Booth or the unbalanced Guiteau; and if the recent diagnosis of Czolgosz's condition be true, it is doubtful to what extent any laws would have operated to prevent this attempt.

We may perhaps as a people be forgiven for the murder of Lincoln, — the offspring of the violent passions born of civil war, — and we may find an historical parallel in the murder of William of Orange or Henry IV of France; but the recorded annals of mankind will be searched in vain to find a parallel to the murders of Garfield and McKinley. In the

unavoidable dangers incident to the high office of President, it would not have been surprising if one of our Chief Magistrates had met a violent death; but the gravity of the charge against this country, and the apparently inexplicable thing, is the frequency of the crime under existing circumstances. It would not have seemed extraordinary if one of our Presidents had died by the hand of a conspirator, an insane person, or an anarchist; but what is astounding, and seemingly unaccountable, is that Lincoln, Garfield, and McKinley should all have been assassinated within forty years.

This phenomenon must be accounted for in some way. There must be a cause lying hidden somewhere. Let us contrast the successful and unsuccessful attempts upon the lives of our Chief Magistrates with the successful and unsuccessful attempts upon the lives of foreign rulers, and see if some light is not thrown upon the subject. For if it should turn out to be true that the attempts to kill our Chief Magistrates have been far less frequent than the attempts to kill the rulers of other civilized nations, and that our trouble is owing to the success of the attempts and not to their number, we are on the road to the discovery of the true cause of the anomalous situation of this country respecting these political crimes.

From 1789 to 1902 there have been four attempts to assassinate the Presidents of the United States, as

compared with ten attempts to assassinate the rulers of England (exclusive of four minor assaults), seventeen attempts to assassinate the rulers of France, ten attempts to assassinate the rulers of Russia; and since 1850 five attempts to assassinate the rulers of Germany (Prussia), six attempts to assassinate the rulers of Spain, four attempts to assassinate the rulers of Italy, and three attempts to assassinate the rulers of Austria. This list is without doubt incomplete. Moreover it does not include many plots and conspiracies which were discovered before consummation. The comparatively large number of recorded attempts in England and France may be due to the effort in some countries to suppress the publication of such events.

This comparison discloses this astounding result: Of the four attempts upon the lives of the Presidents, three have been successful, or seventy-five per cent; of the ten attempts upon the lives of English rulers, none have been successful; of the seventeen attempts upon the lives of the rulers of France, only one has been successful, or about six per cent; of the ten attempts upon the lives of the rulers of Russia, but two have been successful, or twenty per cent. And since 1850, of the five attempts upon the lives of the rulers of Germany (Prussia), none have been successful; of the six attempts upon the lives of the rulers of Spain, none

have been successful; of the four attempts upon the lives of the rulers of Italy, only one has been successful; and of the three attempts upon the lives of the rulers of Austria, but one has been successful.

Limiting this comparison to the attempts since 1860, we find three attempts upon the lives of the Presidents, as compared with two attempts upon the lives of the rulers of England; five attempts upon the lives of the rulers of France; eight attempts upon the lives of the rulers of Russia; three attempts upon the lives of the rulers of Germany; four attempts upon the lives of the rulers of Spain; three attempts upon the lives of the rulers of Italy; and two attempts upon the lives of the rulers of Austria. The comparatively small number of attempts in England during these years may be in part due to the almost absolute seclusion of Queen Victoria after the death of Prince Albert.

This comparison gives the following result: Since 1860 all of the attempts upon the lives of the Presidents of the United States were successful; the two attempts upon the lives of English rulers were unsuccessful; of the five attempts upon the lives of the rulers of France, only one was successful; of the three attempts upon the lives of the rulers of Germany, none were successful; of the eight attempts upon the lives of the rulers of Russia, but one was successful; of the three attempts upon the lives of

the rulers of Italy only one was successful; of the four attempts upon the lives of the rulers of Spain, none were successful; and of the two attempts upon the lives of the rulers of Austria, but one was successful.

Limiting this comparison to the attempts by anarchists, in which the country is now deeply concerned, we find in the past forty years only one such attempt upon the life of the President, as compared with three attempts upon the rulers of France, six attempts upon the rulers of Russia, one attempt upon the rulers of Germany, two attempts upon the rulers of Italy, and one attempt upon the rulers of Austria. The result of these attempts was as follows: The single attempt in this country was successful; the single attempt in Austria was also successful; the single attempt in Germany was unsuccessful; of the three attempts in France, but one was successful; of the six attempts in Russia, only one was successful; and of the two attempts in Italy, but one was successful.

To summarize: Of the four attempts to assassinate the Presidents of the United States since the foundation of the government in 1789, three have been successful, or seventy-five per cent; of the fifty-five attempts to assassinate the rulers of Europe in the countries above mentioned since 1789, only five have been successful, or about nine per cent. Since 1860, of the three attempts to assassinate the Presi-

dents of the United States, three have been successful, or one hundred per cent; of the twenty-seven attempts to assassinate the rulers of Europe in the countries above mentioned, only four have been successful, or fifteen per cent. The single attempt by anarchists to assassinate the President of the United States has been successful; and of the thirteen attempts by anarchists to assassinate the rulers of the European countries above mentioned, only four have been successful, or thirty per cent.

In this comparison between the attempts in this country and in European countries, it should be remembered that the personal protection afforded European rulers undoubtedly prevented many attacks which otherwise would have occurred. The circumstance that a ruler is openly guarded has a marked deterrent effect upon assaults of this nature. It is safe, perhaps, to say that the life of no one of the European rulers I have mentioned, excepting possibly that of England, under the existing political and social conditions in his country, would be safe for a single year if he exposed himself to the same extent as the President of the United States.

This wide difference between the success and failure of the attempts upon the lives of the rulers in this country and in Europe can be accounted for only upon the theory of the absence of safeguards surrounding the President, and his consequent

exposure to attack. Had the would-be assassins of England's rulers since Washington took his seat accomplished their object with the same ease as in this country, in all human probability the number of victims would have been more than double the number of our martyred Presidents; and in France the number would have been four times as great. Had the number of assassinations in England, in proportion to the attempts, been the same as in this country, the number of victims would have been seven, while in France the number would have been twelve. This demonstrates that the difference between our country and other countries lies in the fatality of the attempts, and not in the number. Not only does the United States favorably compare with England and France in respect to these attempts at assassination, but in point of fact there have been more than double the number of attempts in England and more than four times the number of attempts in France, since the organization of the Federal government. It follows that this country would have been comparatively free from these tragedies if reasonable precautions had been taken to protect the person of the President; and that it is not so vital to guard against attempts at assassination as to prevent such attempts from proving fatal, by the exercise of reasonable care on the part of the President himself, and by affording him proper means of protection.

Following this line of inquiry into some of the details of the four attempts upon the lives of our Chief Magistrates, it will be found that three were successful owing to the absence of ordinary safeguards, and that the fourth would have been equally fatal had not the weapons missed fire from some almost miraculous cause.

The would-be assassin of President Jackson was permitted to approach within a few feet of his person, and deliberately attempt to discharge two pistols; the assassin of President Lincoln entered the theatre box where the President was sitting, quietly barred the door behind him, and held his weapon within a few inches of the head of his victim; the assassin of President Garfield approached from behind to within a few feet of his person, fired one shot, and then, unmolested, took deliberate aim and discharged the fatal bullet; and the assassin of President McKinley held his pistol at the President's breast.

Had the portico of the Capitol been properly watched as the President passed along, the would-be slayer of Jackson, who for some time had been walking about unnoticed, would have been apprehended; had the entrance to the box in Ford's Theatre been protected against intruders, Lincoln would not have been shot; had there been some person on watch to observe the approach of Guiteau as the Pres-

ident and Mr. Blaine walked unattended through the waiting-room of the railway station on that fatal July morning, Garfield would not have been stricken down; and had it not been the custom for the President, on all public occasions, freely to shake hands with large crowds of people, or had such hand-shaking been conducted under proper regulations and precautions, McKinley would have been alive to-day.

These considerations strongly confirm the view that the number and frequency of our national tragedies are not due to the prevalence of a spirit of assassination, but spring from our over-confidence and want of caution; and that the most effective remedy lies in keeping, as far as possible, suspicious persons at a safe distance from the President.

If the real cause of these oft-repeated catastrophes be traced to this source, the situation must be recognized and met by the exercise of the same intelligence, common sense, and sound judgment which have ever characterized the American people in dealing with grave public matters.

The sentimental notion that, because we are a democracy and the people have been accustomed freely and on all occasions to meet their Chief Magistrate, it would be unrepublican and savor of royalty to impair this time-honored custom, must not stand in the way where the life of the President is at stake.

If the universal experience of other civilized peoples, confirmed by our recent history, teaches that the safety of the Head of the State is dependent upon surrounding his person with proper safeguards, it is folly for this country to ignore this fact on the imaginary ground that we are a chosen people, and an exception to all ordinary laws.

The conditions which might have rendered it reasonably safe for the President to mingle openly with the people in the early days of the Republic are changed, and we must adapt ourselves to the new environment. There is a great difference between a sparsely settled country, consisting largely of agricultural communities, with slow and difficult means of communication, and a country inhabited by many millions of people of different nationalities, with the railway, the telegraph, and the telephone, and with the conflicting social forces of the latter part of the nineteenth century. In a few days, his coming having been freely advertised, the President may travel from ocean to ocean, and come in contact with a third of the population of the country; and the same facilities for the annihilation of space and time are afforded the would-be assassin. "New occasions teach new duties; time makes ancient good uncouth."

The bill recently reported to the United States Senate from the Judiciary Committee by Senator

Hoar is certainly a movement in the right direction. By section 7 of the bill, "The Secretary of War is authorized and directed to select and detail from the Regular Army a sufficient number of officers and men to guard and protect the person of the President of the United States without any unnecessary display." If this provision should be supplemented by the appropriation of a sum of money, to be at the disposal of the President for the purpose of securing additional police protection, it would be a further aid.

It is said that the President of the French Republic does not attend public meetings, speak from the platforms of railway cars, move around in an approachable and conspicuous way at fairs and expositions, or hold open levees for the shaking of hands.

As supplementary to the above legislation, if the President should exercise, so far as practicable, the same precautions, the risk would be still further reduced. The visible guard surrounding the President of itself would have a tendency to prevent these attacks. It is a somwhat significant fact in this connection, that no assault has ever been attempted upon the President in the White House, where reasonable precautions are taken.

The situation does not demand that our Chief Magistrate shall travel from place to place with

the military pomp of some European rulers or with the gorgeous pageantry of Queen Elizabeth; but it does demand that he shall be accompanied by reasonable safeguards, appropriate to the simplicity and dignity of republican institutions.

Since the death of President McKinley, the thoughts of the people and of Congress have been mostly occupied in the consideration of measures for the prevention of these attempts rather than in the means for guarding against their fatality. The difficulty of preventing attempts through legislation, except in the particular already mentioned, is that the subject in a large measure lies beyond the control of laws. When we consider the class of persons who commonly make these assaults, it will be found that the laws have little deterrent effect upon them. Let us take, for illustration, this country and England.

Of the ten attacks upon the lives of English rulers since 1789, four were by persons pronounced insane; three by persons unknown, who fired from a distance; and two of the remaining three, from the nature of the assaults, were seemingly by persons acting under the impulse of some imaginary wrong. In the case of the six assaults on Queen Victoria, three were manifestly by insane persons; and it is questionable if more than one out of the six was by a person of sound mind.

In this country we find that the would-be assassin of President Jackson was pronounced hopelessly insane by a jury after five minutes' deliberation, that the assassin of President Garfield is universally admitted to have had an unbalanced mind, and that the medical world is now divided on the subject of the sanity of the slayer of President McKinley. The conclusion reached by Dr. Channing, after careful investigation of this person's life, habits, and antecedents, raises a strong doubt, at least, respecting his mental condition. Dr. Channing's diagnosis indicates mental impairment, which assumed the form of delusions; the exciting causes of the act being the reading of anarchistic literature and attending anarchistic meetings. The assassin of President Lincoln alone forms an exception to the general type. In that instance the attack was the outcome of a political conspiracy.

We find, then, that in England these assaults have been largely mad attempts; and that in this country there have been two mad attempts, a third in the nature of a mad attempt inspired by anarchistic teachings, and a fourth the outgrowth of political strife. It is plain that no laws would have checked the insane Lawrence, who imagined that he had been wrongfully deprived of the crown of England; or the conspirator Booth; or the unhinged Guiteau, who, brooding over his failure to obtain office, be-

came possessed of a mad desire to become the cynosure of all eyes; or the morbid Czolgosz, incited by anarchistic teachings — unless possibly our laws had prevented anarchism from crossing the Atlantic.

Fundamentally, this form of assassination is the result of environment. The disease is too deep-seated for legislative cure. We are confronted with two associated causes which cannot be eradicated: the social and industrial conditions of modern society, and the unbalanced mind, — the extremes of wealth, power, ease, and lavish luxury on the one hand, and poverty, ignorance, misery, and the struggle for existence on the other, in a society which also contains the diseased brain, the dethroned reason, homicidal mania; the victim of the delusion of imaginary wrongs to himself, his class, or his nationality; the would-be suicide, who thinks if he kills a ruler monuments will be erected to his memory; the degenerate, the fanatic, and the criminal. So long as these social conditions exist we shall not be free from attempts to assassinate our Chief Magistrate.

But we may still ask, will not some general remedial legislation by Congress help the situation? With respect to mad attempts, which are the most common, or attempts resulting from political conspiracy, it is doubtful if additional legislation other than that which concerns the personal protection of the President would prove in any considerable degree effective.

We have had but one attempt in the nature of a political conspiracy, which arose under exceptional circumstances; and it may be said that we are reasonably safe, for the present, from any attempt of this character. There never was a time in the history of this or any other country when the affections of the people for their government and their Chief Magistrate were so strong and all-pervading. Grave and perilous political questions like slavery and the right of secession no longer rouse the violent passions of the people and divide the country into hostile camps.

We must not, however, place too much confidence in the continuation of the existing state of affairs. The danger of a disputed succession to the Presidency, such as existed in 1876, cannot be ignored. This is a danger inherent in our electoral system, and is the weak spot in our Federal form of government.

Nor must we overlook the possible consequences of a conflict between labor and capital under present industrial methods. It is an economic law that periods of general financial depression occur about every twenty-five years; and if the situation during one of these crises should be aggravated by a shortage of crops, it might produce conditions which lead to political conspiracies. But no such situation seems near at hand; and we may rest reasonably secure against attacks upon the life of the President springing from any such cause.

The assassinations which have startled the world during the past ten years have been by anarchists, and the most universally beloved President in our history has fallen a victim. This great sorrow still overshadows the country, and the people are waiting, hoping, praying, that Congress will in some way shield the nation from such tragedies in the future. It is a most difficult crisis to meet. We have already pointed out that the field of effective legislation on this subject is limited; at the same time such laws as we believe will prove beneficial should be speedily enacted.

The present danger is not so much from anarchistic conspiracies hatched by any of the known groups of anarchists, as from some morbid individual who feels that he must become the executioner of anarchy, — the most dangerous criminal known to history.

It is fifteen years since August Spies and others were executed. Had any of the groups of Chicago anarchists, in revenge for their death, planned to assassinate the President, many opportunities would not have been wanting. President Carnot, Empress Elizabeth, and King Humbert have all been assassinated by some member of a group of Italian anarchists. A branch of this group is located in Paterson, New Jersey, and Bresci went from there on his mission to kill the King of Italy. Had this group included among its intended victims the President of

the United States, the accomplishment of that purpose at any time would have been an easy task.

It is undoubtedly true that free institutions afford some measure of protection against these attacks, and that they have been mainly directed against the rulers of European countries, owing to different political and social conditions. But still our recent experience has taught that the freest government is not exempt from this danger, and that we must guard against it in every possible way. It is also true that the wisdom of extreme repressive measures is doubtful. The experience of Spain and other countries has shown that drastic legislation has always been followed by renewed attempts of a more deadly and violent kind.

The type of anarchists who seek to enforce their doctrine by assassination discloses difficulties in the way of meeting the situation by laws. These individuals may be classed in the same category with those who make what are known as "mad attempts" upon the Head of the State. According to Regis, they are the typical regicides or magnicides, who have existed from remote antiquity. They are fanatics with minds tainted by insanity, eccentricity, epilepsy, and suicidal impulse. We are not here referring to the revolutionary anarchists as a body, but to the particular type who execute these deeds of violence and death. Professor Lombroso, of the University

of Turin, as the result of his researches, finds that a large number of this particular type of anarchists are madmen and criminals. Some who had attempted assassination were epileptics; others were victims of alcoholism; others were indirect suicides, rejoicing at the opportunity of being put to death for the murder of a ruler; others were partially demented, imagined themselves persecuted, and were carried away by a violent impulse for assassination. In no case have they been known to have had accomplices. They "are almost always alone in concealing, preparing, and accomplishing their deeds, being unwilling to have anyone share with them the merits and honors."

It is hard to reach this type of anarchist by legislation. He is not easily discovered in the country, nor easily kept out. It is said that the leader of an Italian group of revolutionary anarchists travels from country to country at will.

The exciting causes which lead to assassination by this type of anarchist are anarchistic books, pamphlets, papers, and attendance upon gatherings of revolutionary anarchists. Although we have now reached a field where legislation may help, a moment's consideration will show the difficulties that are encountered.

Anarchy, or anarchism, is a broad term. There is philosophical anarchism and revolutionary anarchism;

and there are philosophical anarchists, revolutionary anarchists, and the anarchists of terror.

Philosophical anarchism, which is beyond legislative control, is a theory of social life based upon an ethical view of human relations. It is the philosopher's dream of a perfect state of society composed of perfect human beings. It signifies that if everybody did what was right there would be no need of government. It is "individualism run mad." Its falsity is based upon the assumed premise of perfection of humanity. Many thinkers believe it is the goal which society should strive to reach and which eventually will be attained. In a purely ethical sense, some of our greatest philosophers may be classed as anarchists.

Anarchy is the antithesis of government. It is society without government. It denies the utility of all government. It calls for a state of absolute individual liberty and equality. "All institutions — economic, ethical, religious, or political — that in any sense circumscribe or limit the equality, freedom, and liberty of men as individual units are, therefore, an evil to be eradicated." "Free democratic governments are no better than despotic monarchies." It ascribes all the evils of society to law and government. As some reformers attribute social evils to ignorance or other causes, the anarchist attributes them to government, and proposes "the abolition

of all law, government, and authority as a universal panacea."

If the writers on anarchism limited their language to the legitimate discussion of their theory of society, the State could not well complain; but such is not the fact. In Proudhon, Bakunin, Kropotkin, and other writers, are found thoughts and expressions which incite to violence, and which provoke the writings and pamphlets of the radical revolutionary anarchists. We may cite a few examples of their teachings and maxims:

"Governments are the scourge of God."

"Property is robbery."

"Theft is the recovery by violence from the rich of that which the rich have taken by violence from the poor."

"Appropriation by force must be the anarchists' prelude to the wholesale insurrection which they will sooner or later enact."

"Law has no title to the respect of men. Born of violence and superstition, and established in the interests of the consumer, priest, and rich exploiter, it must be utterly destroyed on the day when the people desire to break their chains."

"No more laws! No more judges! Liberty, equality, and practical human sympathy are the only effectual barriers we can oppose to the anti-social instincts of certain among us."

Such ideas taken up by the extreme revolutionary anarchists lead to the expression of such sentiments as the following:

"Our only hope is in earnest, organized action. Burn, kill, and destroy until we force the autocrats to turn. We have lost hope in God, hope in humanity, and hope in the world at large. Let every man do his duty. This is a time when the workingman will either become a slave or a master. Choose between the two, and choose at once. Let us give no quarter, and ask none; only let us stand by each other, and each man at his post. If we must die, let us die like men, and not slaves."

By a process of evolution we are conducted, step by step, from the theory of anarchy through anarchistic literature to revolutionary anarchy and its literature of violence, and thence to the anarchy of terrorism and its executioner, the typical regicide.

Although anarchistic literature is in our public libraries, and anarchists are with us, there can be no question of the power of the State to forbid the publication and circulation of writings calculated to incite to violence and murder, and to forbid the assemblage of persons for the purpose of instigating and advising violence and murder. The constitutional right of free speech cannot here be invoked. Free speech is a no more sacred right than self-protection. Free speech does not mean the right to take, or to incite

the taking of, the life, property, or reputation of another.

All personal rights are reciprocal and mutually binding, and are enjoyed upon the condition of respecting the enjoyment of the same rights by others; and the purpose of the law is the enforcement of these mutual obligations. Without invoking the broader and more elastic rule that free speech may be restrained respecting acts which are inimical to the peace, good order, and morals of a community, its restriction here rests upon the fundamental doctrine of personal rights and obligations.

Revolutionary anarchists should be prohibited by severe penal laws from uttering, writing, or publishing language threatening, advising, or instigating the killing of the President, or advising or instigating another to kill the President, or conspiring with others to kill the President.

The comprehensive and carefully drawn bill of Senator Hoar, from which we have already cited one provision, covers this whole branch of the subject. It punishes with death any person who, within the jurisdiction of the United States, shall wilfully kill or cause the death of the President or Vice-President of the United States, or any officer thereof upon whom the powers and duties of the President may devolve, or who shall wilfully cause the death of the sovereign or chief magistrate of any foreign

country; and the same penalty is inflicted upon any persons who shall attempt to commit either of these offences. It punishes by a term of imprisonment not exceeding ten years any person who, within the jurisdiction of the United States, shall instigate, advise, or counsel the killing of the President or Vice-President of the United States, or any officer thereof upon whom the powers and duties of the President may devolve, or who shall conspire with any other person to accomplish the same, or who shall instigate, advise, or counsel the killing of the sovereign or chief magistrate of any foreign country, or shall conspire with any other person to accomplish the same. It punishes by imprisonment not exceeding ten years any person who shall, within the jurisdiction of the United States, by spoken words, or by written or printed words, uttered or published, threaten to kill, or advise or instigate another to kill, the President or Vice-President of the United States, or any officer thereof upon whom the powers and duties of the President may devolve. It further provides that any person so conspiring may be indicted and convicted separately, although the other party or parties to the conspiracy are not indicted or convicted; and that any person who shall wilfully and knowingly aid in the escape from punishment of any person guilty of any of the above offences shall be deemed an accomplice after the fact, and

shall be punished as if a principal, although the other party or parties to the offence shall not be indicted or convicted.

It will be observed that this bill includes not only the President, but the Vice-President and other persons in the line of succession to that high office, as well as the heads of foreign States. These additional provisions are important and necessary. Civilization and the comity of nations forbid that this country should become the vantage-ground for conspiracies to kill foreign rulers. We should prevent by law, so far as possible, assassins taking up their abode in this country mainly for the purpose of crossing the Atlantic at a convenient and opportune time to assassinate a foreign ruler.

Although no person who has attempted to assassinate the President of the United States has escaped justice, our present Federal laws are manifestly defective and inadequate in that they make no provision for the punishment of persons who kill, or attempt to kill, the Chief Magistrate. Had President McKinley been shot in Rhode Island or Maine, or in any other State where capital punishment has been abolished, the punishment of the assassin would have been limited to imprisonment for life. Had the assault on the President not proved fatal, the maximum penalty for his would-be murderer, under the laws of New York, would have been but ten years.

There is no doubt of the power of Congress, under the Constitution, to make laws for the protection of foreign rulers and ambassadors, because this subject comes within the law of nations. But the power of Congress to enact laws for the protection of the President has been questioned. Time will not permit an entry into this field of discussion. The question has never been passed upon by the Supreme Court. It may be claimed, with a good deal of confidence, that the limitation of this power to other officers of the government when engaged in the duties of their office, does not apply to the President of the United States or other persons in the line of succession. The protection of the President is a distinct question, far more vital and fundamental than the protection of other government officers.

The Constitution vests the executive power in the President, and gives Congress the power to make all laws necessary for carrying into execution the powers vested by the Constitution in the government. Every government has the inherent power of self-preservation. The Supreme Court has often said that the government was endowed with all the powers necessary for its own preservation. To strike down the President is to strike down the executive head of the government, — the person charged at all times with the execution of the laws.

With the possible exception of treason, the assassination of the President is the highest known crime against the United States; and the power of Congress to pass laws for the punishment of crimes against the United States has always been recognized and exercised.

In addition to Senator Hoar's bill, some further protection may be afforded in more liberal extradition treaties, which possibly should cover an international police surveillance of the class of revolutionary anarchists who instigate and advise assassination.

The opinion expressed by some that the present situation justifies the passage of stringent laws respecting immigration and naturalization, I do not entertain. It is doubtful if such laws would accomplish the purpose designed, and reach the revolutionary anarchists. Anarchy can be finally stamped out only through the influence of education. Although most of the anarchists in this country are aliens or of alien descent, it is a fact worthy of mention that, with the exception of the hopelessly insane Lawrence, no alien or naturalized person has ever raised his hand against the President of the United States.

The whole question of the protection of the life of the President is one of the elimination of chances. This investigation has led me to conclude that the

primary thing is to safeguard the President's person, and that this should be supplemented by legislation along the lines considered.

Among the reasons for my thankfulness for this invitation to address the New Hampshire Bar Association, is the opportunity it has afforded for some examination into the causes of the strikingly anomalous situation of this country concerning the assassination of its Chief Magistrates. I cannot express the gratification which I have derived in satisfying my own mind that the principal cause is carelessness and neglect, and does not lie deeper in the character of our people or government.

No! The liberty of this country is not the liberty of assassination. Our dream of self-government has not proved a delusion. The struggles and sacrifices of mankind have not been in vain. The nation still remains the home of freedom, law, and justice.

Each of these terrible tragedies has only added strength and unity to the Republic. The world has never witnessed such a tribute of love for a ruler, or devotion to a government, as when the martyred McKinley was laid to rest amid the hush of traffic and industry, while the nation, in silent prayer, stood like a statue upon whose brow was beating the soft, pure light of liberty.

This country presents to-day as fair a picture of

government and society as ever met the eye of man; a picture full of human comfort, happiness, and well-being. There are spots on the surface like the spots on the surface of the sun, and there always will be so long as society is composed of imperfect humanity.

We have erected a State majestic in its proportions, with liberty at its base, — the most powerful political system ever known, combining the freedom of the individual and the community with the strength of a mighty empire. We have tried to secure the prosperity and welfare of the whole people, including all races and nationalities who have sought these shores. Political equality we have realized; but equality of well-being and of human satisfaction we have not attained. The great and irreversible laws of nature, that wealth is the product of labor and sacrifice, and that men are born with unequal capacity and energy, oppose their insuperable barriers to such an accomplishment. But, through divine charity, we see the light which shall dispel this darkness. Indeed, the consummation seems near at hand, as we behold genius, through human sympathy, bestowing upon mankind the fruits of the talents derived from God.

LAW AND REASONABLENESS

The Annual Address before the American Bar Association at Hot Springs, Virginia, on August 27, 1903.

Mr. President and Gentlemen
of the American Bar Association:

THE first and most pleasant duty which falls upon me at this time is the acknowledgment of my deep appreciation of the very high honor of the invitation to address you at your annual meeting.

I understand it is a law of this Association, established by its founders, that these invitations are not under any circumstances to be declined; and that it has been decreed that this particular law is a *command* proceeding from a sovereign power, and that ignorance of the law is no excuse. At the same time it must be confessed that obedience to your mandate is not an easy task. Our professional duties are laborious and exacting. Judges, as well as lawyers, are busy men, and time for preparation is limited.

Another difficulty, which increases from year to year, is the choice of a subject. We are told that Augustus dealt the final blow to the *Responsa Prudentum*, the "answers of the learned in the law."

The probable cause was that the subjects were exhausted. I need hardly remind you that the answers of the learned in the law during the quarter of a century since this Association began its invaluable work, in the addresses of its presidents, the annual addresses, and the papers read, have so far covered the whole field of jurisprudence that the last three annual responses of the jurisconsults were devoted to the elucidation of a single important topic of national concern. It is, therefore, with much hesitancy that I shall invite your attention to some observations on Law and Reasonableness.

The essence and end of law are no doubt truthfully expressed in the maxims:

"Law is the perfection of reason."

"Reason is the soul of the law; and when the reason of any particular law ceases, so does the law itself."

"The reason and spirit of cases make law, not the letter of particular precedents."

"Reason is the life of the law; the common law itself is nothing else but reason."

It is also undoubtedly true that the great body of the law is founded upon the dictates of right reason, natural justice, and common sense.

But, notwithstanding all this, it is an historical fact that the growth and expansion of the law from primitive custom to the present time has been a continuous

struggle between the rigid rules of positive law and the standard of reasonableness and common sense of society in its upward march to a higher civilization; and the struggle still continues. All through the centuries of the law's development in those two great systems of jurisprudence which have been adopted by the civilized world, the English law and the Civil law, there has been a constant effort to bring existing rules into harmony with advancing civilization.

The phenomenon which always presents itself in progressive societies may be thus described: On the one hand, there is a body of legal rules which by nature are stable and enduring; on the other hand, there is a society with ever-changing social necessities and opinions. From the very nature of these conditions, which are permanent, there is the inevitable result that the old rules of law cease to conform to the new facts of life; that they are not adapted to the ever-varying views of society; and that consequently they come, in part at least, to be regarded as narrow, unreasonable, and out of touch with progress and enlightened public sentiment.

To keep the rules of positive law as nearly as possible abreast of social wants and public opinion, is the difficult problem which always has and always will confront progressive nations. That gulf can never be entirely bridged. A stationary body and

a moving body cannot be kept together. We can only by unceasing effort narrow the chasm. Sometimes the spirit and temper of society are far in advance of legal rules; at other times they nearly meet. Upon the expedition with which the breach between law and social progress is lessened, or upon keeping them close together, depend, in large measure, the welfare of society and the happiness of the people. In progressive societies, says Maine, "it may be laid down that social necessities and social opinions are always more or less in advance of law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to reopen. Law is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed."

Such being the position of the law in its relation to progressive societies, what have the lawyers done to help relieve the situation? Where have they stood in this long struggle between an unreasonable past and a reasonable present, between a body of rigid legal rules and an advancing civilization? Are they justly open to the charge of riveting the chains which bind the community to customs and usages it has outgrown by their devotion to technicalities, legal forms, and precedents? Have they stood with Selden when he exclaimed, "Equity is a roguish

thing"? Have they been unmindful of the fact that they are largely responsible for the existing condition of the law at every stage of social progress, and that upon them devolves the duty, in great measure, of keeping it in harmony with national growth? Have they failed to realize that the law is made for society, and not society for the law; and that it should be adapted, as far as possible, to meet the "great, complex, ever-unfolding exigencies" of life and government?

Let us first see how some of the great lawyers have answered these inquiries.

It was Coke who said: "The principles of natural rights are perfect and immutable, but the condition of human law is ever changing, and there is nothing in it which can stand forever. Human laws are born, live, and die."

It was Hale who declared: "We must remember that laws were not made for their own sakes, but for the sake of those who were to be guided by them. . . . He that thinks a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago may as well imagine that the clothes that fitted him when a child should serve him when he was grown a man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies change in a long tract of time, and so must

their laws in some measure be changed, or they will not be useful for their state and condition."

It was Hardwicke who marked out and systematized that great body of rational and remedial rules we call equity, which has done so much to keep the law in touch with social progress. It was Mansfield who declared that the air of England was too pure to be breathed by a slave, who built up the commercial law to meet her expanding commerce and industries, and of whom Burke says: "His ideas go to the growing amelioration of the law by making its liberality keep pace with the demands of justice and the actual concerns of the world, — not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire."

It was Marshall who breathed into our Constitution the breath of life, and who declared: "This provision is made in a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers would have been to change entirely the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which,

if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances."

It was Story who said: "Government presupposes the existence of a perpetual mutability in its own operations on those who are its subjects, and a perpetual flexibility in adapting itself to their wants, their interests, their habits, their occupations, and their infirmities."

It was Shaw who declared: "It is the great merit of the common law that it is founded upon a comparatively few broad, general principles of justice, fitness, and expediency, . . . generally comprehensive enough to adapt themselves to new institutions and conditions of society, new modes of commerce, new usages and practices, as the progress of society in the advancement of civilization may require."

Such has been the position of the lawyers in the struggle between legal rules and social progress; and this position is corroborated by the history of the law's development from early times.

The history of the growth and expansion of the Roman and English systems of jurisprudence dis-

closes the important part taken by the lawyers in making the law more reasonable as society required. The doctrines and instrumentalities which have enabled it to keep nearly abreast of the moral and intellectual growth of the people have been largely their work.

When Rome extended her boundaries over Italy, and the rules of the civil law, embodied in the Twelve Tables, became narrow and unreasonable in their application to foreigners, it was the Roman jurisconsults who conceived and carried into effect a code of rules which overrode the harsh civil code. They based this new code upon the assumption that there were certain ingredients in the law which were common to Rome and other Italian communities. To justify this assumption, they appealed to tradition and observation. "The expedient to which they resorted," says Maine, "was that of selecting the rules of law common to Rome and to the different Italian communities in which the immigrants were born. . . . The *Jus Gentium* was accordingly a collection of rules and principles, determined by observation to be common to the institutions which prevailed among the various Italian tribes."

When this doctrine became inadequate as an instrument for expanding the rules of the civil law for the purpose of meeting the wants and aspirations of the Roman people as they advanced to the conquest of

the world, the Roman lawyers borrowed a theory from Greek philosophy for the purpose of expanding the *jus gentium*, called the Law of Nature — a theory which soon became the basic principle underlying that vast superstructure known as Roman law; a theory which has exerted a profound influence upon English law, and upon whose foundation rest the Law Merchant and modern International Law. To this same theory may also be traced the principle that all men are born equal, and are entitled to equal protection of the laws, which is found in the Declaration of Independence and in the Constitution of the United States.

In giving expression to this theory, the Roman jurisconsults said: "All nations, who are ruled by laws and customs, are governed partly by their own particular laws, and partly by those laws which are common to all mankind. The law which a people enacts is called the Civil Law of that people, but that which natural reason appoints for all mankind is called the law of nations because all nations use it."

The doctrine of the Law of Nature — first practically utilized in the administration of justice by Roman jurists — whose primordial elements are uniformity, simplicity, harmony, and equality, and whose broadening influence upon the jurisprudence of the world has been so potent and permanent, is the doctrine of intrinsic reasonableness. It is the doctrine

prescribed by absolute, evident, and universal reason as manifested in the consent of reasonable men. It consists of a body of precepts which satisfy, and are in accord with, right human reason, and which are binding on all mankind by virtue of their inherent reasonableness. To the classical Roman lawyers, in the words of Sir Frederick Pollock, "It would be convenient to take *ius naturale* for the sum of rules of conduct which ought to be received because they are reasonable in themselves, and *ius gentium* for those which are received in fact by the general consent of civilized mankind." To the publicists of the Middle Ages, he says, "the Law of Nature presented itself as a rule of human conduct independent of positive enactment and even of divine revelation, and binding always and everywhere in virtue of its intrinsic reasonableness." The same high authority declares that the Law Merchant "claimed the respect and aid of local magistrates as a branch of the Law of Nature, considered as a body of legal rules demonstrable by natural human reason, and therefore entitled to universal obedience." And further, that Gentili the pioneer, and Grotius the founder, of International Law, laid its foundation on the broad and universal principles of the Law of Nature.

While English jurisprudence has not adopted the Law of Nature, in the sense of the civil law, as the fundamental doctrine underlying the whole system,

our courts have appealed to its principles, and have been governed by its precepts.

They have said that positive laws are invalid which contradict the Law of Nature, that it is binding in all countries and at all times, and that no human laws are of any validity if contrary to this. They have invoked this doctrine in their assertion that acts of Parliament which were contrary to universal reason and natural justice were void; that the fundamental principles of right and justice inherent in the nature and spirit of the social compact restrain and set bounds to the power of legislation; and that the legislature cannot take away that security for personal liberty and private property for whose protection the government was established. Chancellor Kent appealed to this doctrine when he asserted that "a statute is never to be construed against the plain and obvious dictates of reason"; and Mr. Justice Miller, when he declared: "It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all a despotism"; and Mr. Justice Brown, when he said: "It is sufficient to say that there are certain immutable principles of justice which inhere in the very

idea of free government which no member of the Union may disregard." If the judges, in their appeals to the Law of Nature, have not succeeded in overthrowing the principle of the omnipotence of legislative power where it is exercised in violation of natural reason and common sense, we cannot but admire the lofty sense of justice by which they were actuated in their protest against its full and complete acceptance under all circumstances.

But the courts have gone further. They have said that the Law of Nature is a part of the law of England. They have struggled more and more, as society has advanced in civilization, to make the law conform to its teachings; to make it "the sum of rules of conduct which ought to be received because they are reasonable in themselves"; to bring it into harmony with natural reason as manifested in the consent of reasonable men. They have incorporated this doctrine of reasonableness into all branches of the law. It lies imbedded in the rights of person, in the rights of property, and in the rules of procedure. It permeates the law of contracts and negligence. The exercise of the police power turns upon it. It limits and qualifies the enjoyment of individual rights. It is a kind of universal postulate underlying all rules of civil conduct.

The courts have also called in aid this doctrine of reasonableness to justify a departure from the

strict rules of law. They have built up equity upon it, and relied on its precepts for decision in doubtful cases. They have founded the rules of constitutional interpretation upon it. The principles of the common law which are so frequently invoked by the judges may be said to rest on this doctrine, — those principles which Chief Justice Shaw calls "the broad, general principles of justice, fitness, and expediency." Mansfield appealed to the same doctrine when he declared:

"The law of England would be a strange science indeed if it were decided upon precedents only. Precedents serve to illustrate principles and to give them a fixed certainty. But the law of England is exclusive of positive law, enacted by statute, depends upon principles, and these principles run through all the cases according as the particular circumstances of each have been found to fall within the one or other of them."

The same doctrine was invoked by Mr. Justice Brewer when he said:

"But passing beyond the matter of authorities, the question is essentially one of general law. It does not depend upon any statute; it does not spring from any local usage or custom; there is in it no rule of property, but it rests upon those considerations of right and justice which have been gathered into the great body of the rules and principles known as the 'common law.'"

But the lawyers have done much more than incorporate into the law the theories and doctrines by which its rules have been made more rational in response to social changes and advancing civilization. They have devised those great remedial agencies, Fictions and Equity, by which the work has been largely carried on. It is almost wholly through these instrumentalities that for centuries the rules of law were enabled to meet the growing wants of society; for it is not until a comparatively recent period in the history of jurisprudence that legislation has been relied upon to any large extent as a remedial agency. And in respect to legislation, it will be found that the judiciary, through its power of construction and interpretation, has acted as a safeguard against the enforcement of unreasonable statute laws.

It was the Roman jurisconsults who resorted to fictions for overcoming the severity of legal rules, and reconciling the letter of the law with common sense and justice. When large numbers of foreigners flocked to Rome, the strict rule of the civil code that no one but a Roman citizen could maintain suit became harsh and unjust; whereupon the Roman lawyers invented the fiction that if a foreigner averred he was a Roman citizen, the defendant could not traverse the allegation. From analogy to this Roman fiction, the Supreme Court of the United States, more than two thousand years afterwards, adopted

the fiction that all the members of a corporation are presumed to be citizens of the State which created it, and that no one shall traverse this presumption.

Although legal fictions have been called rude absurdities, they were, especially in the early stages of jurisprudence, highly useful and beneficial instruments for expanding the stern rules of law as society demanded. "At a particular stage of social progress," says Maine, "they are invaluable expedients for overcoming the rigidity of law, and, indeed, without one of them, the Fiction of Adoption, which permits the family tie to be artificially created, it is difficult to understand how society would ever have escaped from its swaddling clothes, and taken its first steps towards civilization."

"The supposition," declares Dicey, "that the cunning of lawyers has by the invention of legal fictions corrupted the fair simplicity of our original constitution, underrates the statesmanship of lawyers as much as it overrates the merits of early society. The fictions of the courts have in the hands of lawyers such as Coke served the cause both of justice and of freedom, and served it when it could have been defended by no other weapons. For there are social conditions under which legal fictions or subtleties afford the sole means of establishing that rule of equal and settled law which is the true basis of English civilization."

It is also true that the English judges and Roman jurists have really employed fictions in a much broader sense, for the purpose of changing, extending, and modifying the rules of law in order to bring them into harmony with social progress and the actual concerns of life. Upon the supposition that there actually existed in the body of the law a rule which would cover the facts of every case, they proceeded, as cases arose, to engraft upon the old law a new code. In theory, the law remained the same; in fact, it had been changed.

A marked illustration of this process is found in the decisions of Lord Mansfield, who added to the English law a body of rules, unknown to the common law, relating to bills of exchange, promissory notes, marine insurance, and other kindred subjects, to the end of "conforming our jurisprudence to the growth of our commerce and of our empire."

There is an interesting description of how the law springs into existence through judicial decision in a case where there is no record of a preceding similar case, in Mr. Carter's notable address before this Association on "The Ideal and the Actual in the Law":

"In all this the things which are plain and palpable are, (1) that the whole process consists in a *search* to find out a rule; (2) that the rule thus sought for is the *just* rule, — that is to say, the rule most in accordance with the *sense of justice* of those engaged in the

search; (3) that it is tacitly assumed that the sense of justice is the same in all those who are thus engaged, — that is to say, that they have a *common standard of justice* from which they can argue with, and endeavor to persuade each other; (4) that the field of search is the habits, customs, business, and manners of the people, and those previously declared rules which have sprung out of previous similar inquiries into habits, customs, business, and manners." By this method "a rule is deduced which is declared to be the one which the existing law requires to be applied to the case."

This process of case law legislation has been employed since the birth of jurisprudence. It is still in active operation, and will so continue while the great body of our law is unwritten or common law and but a small fraction statute law.

When legal fictions, in the progress of society, became unequal to the task of overcoming the rigidity of the rules of positive law, there grew up alongside of that system a body of principles known as equity. This was the work of the Roman prætors and the English chancellors. As the old rules became harsh and unreasonable and out of harmony with civilization, they gradually adopted this new and more perfect system to meet social necessities and public sentiment; a system which was "to stand side by side with the law of the land, overriding it in case of conflict, as on some title of inherent superiority, but not

purporting to repeal it." They held that the proceedings in equity were not like the inelastic rules of law established from time immemorial, but were adapted to the existing state of society.

"I wonder," said Chief Justice Vaughan, who was called to sit with the Chancellor in *Fry* v. *Porter*, "to hear of citing of precedents in matter of equity, for if there be equity in a case, that equity is an universal truth, and there can be no precedent in it; so that in any precedent that can be produced, if it be the same with this case, the reason and equity is the same in itself; and if the precedent be not the same case with this, it is not to be cited."

To which the Lord Keeper Bridgman replied: "Certainly Precedents are very necessary and useful to us, for in them we may find the reasons of the equity to guide us; and besides, the authority of those who made them is much to be regarded. We shall suppose they did it upon great consideration and weighing of the matter, and it would be very strange and very ill if we should disturb and set aside what has been the course for a long series of time and ages."

Although precedents have had their influence upon English courts of equity from the beginning, they were not considered of binding authority. We may here refer to the words of Lord Hardwicke: "When the court finds the rules of law right, it will follow

them, but then it will likewise go beyond them"; and of Lord Cottenham: "I think it is the duty of this court to adapt its practice and course of proceeding to the existing state of society, and not, by too strict an adherence, to decline to administer justice, and to enforce rights for which there is no other remedy. This has always been the principle of this court, though not at all times sufficiently attended to."

"It must not be forgotten," said Jessel, "that the rules of courts of equity are not like the rules of the Common Law, supposed to be established from time immemorial. It is perfectly well known that they have been established from time to time, — altered, improved, and refined from time to time."

It is true that, both in Rome and England, equity ceased in time to be expansive. It was, however, one of the principal instrumentalities created by Roman and English judges, by which for many generations the law was expanded with social growth.

We have now reached the third, and, in modern times, by far the most important remedial agency for the amelioration of the law, namely, legislation. This instrumentality rests upon the doctrine of legislative omnipotence. In Great Britain Parliament has absolute power. In the United States the same uncontrollable power has been vested by the people in the legislature, subject to the limitations imposed by the Federal and State constitutions. From the nature of

this power it is obvious that in this field of reform judicial action is limited. Let us examine briefly the position of the courts with respect to this all-potent remedial agency.

Before the division between the legislative and judicial powers of the government had become so sharply defined, the courts, as we have already pointed out, vigorously protested against the authority of the legislature to enact a valid law which was in violation of natural justice and common sense. Such expressions are found in judicial decisions from Lord Coke in Bonham's case, who declared that "when an act of Parliament is against right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void," down to Mr. Justice Miller in *Loan Association* v. *Topeka*, and Mr. Justice Brown in *Holden* v. *Hardy*.

Again, in their desire to make statute law reasonable and accord with public opinion, the courts in early times resorted to the doctrine of equitable construction. Upon this principle they disregarded the letter of the statute, and extended its provisions to cases "within the same mischief," or they excepted from the statute, though covered by its terms, other cases on considerations of justice and right reason.

"From this judgment and the cause of it," says Plowden in a note to *Eyston* v. *Studd*, "the reader may observe that it is not the words of the law, but the

internal sense of it that makes the law, and our law, like all others, consists of two parts, viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law are the soul of the law. . . . And it often happens that when you know the letter you know not the sense; for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive. And equity enlarges or diminishes the letter according to its discretion."

Although the doctrine of equitable construction has been disowned as encroaching upon the exercise of legislative power, the courts still call to their aid, in their efforts to make statute law conform to the dictates of common sense, essentially the same principle in another form. They now declare that a statute should be construed with reference to its spirit and reason. This principle is laid down by the Supreme Court in *Trinity Church* v. *United States*. The question in issue was the applicability of the Alien Contract Labor Law to a clergyman who came to this country under a contract to enter the service of a church. It was conceded that the case came within the letter of the law.

"It is a familiar rule," said the court, "that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers. This has been

often asserted, and the reports are full of cases illustrating its application."

In support of its conclusion, the court cites from its opinion in *United States* v. *Kirby:*

"All laws should receive a sensible construction. . . . The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burned.'"

The courts have also employed presumptions extensively to make statute law reasonable. There is the presumption against injustice; the presumption against an absurdity or absurd consequences; the presumption against inconvenience or hardship; the presumption against an impossibility; the presumption as to public policy, which means that the legislature does not intend to violate public morality or the principles of sound public policy. These and other presumptions

are resorted to where statutes are in any way doubtful or ambiguous, and so open to more than one construction, in order that they may conform to reason and common sense.

The invocation of the doctrine of reasonableness by the courts in aid of progress and the protection of society, is strikingly illustrated in the conflict between legislative omnipotence and the constitutional guaranties of personal liberty and equality secured by the Fourteenth Amendment to the Constitution of the United States.

When the Constitution was ratified in 1789, the people were fearful of centralization and consolidation, and hence the bill of rights embodied in the first ten amendments was speedily adopted. These amendments only restrain the national government, and have no application to the States. After the close of the Civil War in 1865, public opinion had changed, and in 1868 the Fourteenth Amendment became a part of the supreme law of the land. By its provisions the States are prohibited from passing or enforcing any law which shall deprive any person of life, liberty, or property, without due process of law, or deny to any person the equal protection of the laws.

We have, on the one hand, the State legislature clothed with the police power, the taxing power, the power of eminent domain, and other general powers; and on the other hand, this constitutional guaranty of

individual liberty and equality. In dealing with this situation the Supreme Court has declared that there is a boundary line beyond which the legislature will not be permitted to pass; and this line is established by the application of the doctrine of reasonableness. It is held that the exercise by the legislature of its great powers in an unreasonable way is not due process of law, or equal protection of the laws, within the meaning of the Fourteenth Amendment. In reaching this position, it became necessary for the court to lay down a principle which is far-reaching, and fraught with momentous consequences, namely, that the question of what is reasonable is a judicial and not a legislative question. As this question was first left by the court in *Munn* v. *State of Illinois*, it might have been supposed that it was for the legislature to determine what is reasonable. In the subsequent case, however, of *Chicago Railway Company* v. *Minnesota*, it was decided that the legislature could not authorize the imposition of unreasonably low rates, since such action would deprive railroads of their property without due process of law. And in later cases it has been authoritatively adjudicated that the question of what is reasonable is for the court and not for the legislature. In *Covington Turnpike Company* v. *Sanford*, the court declared:

"There is a remedy in the courts for relief against legislation establishing a tariff of rates which is so

unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of equal protection of the laws."

The paramount inquiry by the Supreme Court in all cases involving the exercise of the police power is whether the action of the legislature is reasonable under the circumstances, or an arbitrary and unreasonable interference with individual liberty. An admirable summary of the court's views on this important subject is found in *Lawton* v. *Steele:*

" To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is

not final or conclusive, but is subject to the supervision of the courts."

At the close of the opinion in *Holden* v. *Hardy*, after an elaborate review of the cases and underlying principles, the court said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

So, likewise, classification by the legislature of corporations or trades for the purposes of taxation or regulation must be reasonable. As the court declared in *Railway Company* v. *Ellis*, upon full consideration of this subject:

Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. . . . It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground — some difference which bears a just and proper relation to the attempted classification — and is not a mere arbitrary selection."

The standard of reasonableness is also applied to legislative acts establishing rules of procedure. To constitute due process of law such rules must "be reasonably suitable to the nature of the case." For example, in *Wheeler* v. *Jackson* it was held that a statute of limitations must not unreasonably limit the opportunity to enforce a right by suit.

Our highest form of statute law is the Federal Constitution. The Roman jurists tell us that each nation is governed partly by its own particular laws and partly by laws ordained by natural reason, which are common to all nations. So with us, each State is governed partly by its own particular laws, and partly by the paramount law of the Constitution which is common to all the States. And with respect to this paramount law the Supreme Court has pursued a method of interpretation which conforms to natural reason. Recognizing that the supreme law of this great cluster of States must harmonize with national growth, its canons of construction may be said to rest upon the precepts of the Law of Nature, upon the doctrine of intrinsic reasonableness. They are, in substance, a body of rules demonstrable by natural human reason. A constitution, it is held, is a frame of government intended to endure for ages. It is not a rigid code, but a declaration of general principles. It is not governed by the rules of positive law, nor by those which apply to ordinary statutes,

charters, and private writings. It is to be construed fairly, liberally, and on broad, general lines, in order that it may accomplish the great purposes of its founders, and carry into effect the principles of government for which it was organized. It presupposes a "perpetual mutability" in society, and a "perpetual flexibility" in adapting itself to the national wants, habits, and aspirations. "The powers which are conferred, the restrictions which are imposed, the authorities which are exercised, the organization and distribution thereof which are provided, are in each case for the same object," — the common benefit, security, and happiness of the people. "It is a constitution we are expounding," exclaimed Marshall; and Marshall's decisions are the incarnation of rational interpretation and common sense.

Such has been the attitude of the courts and lawyers in the ever-existing struggle between the rules of positive law and advancing civilization. They have striven to keep the law in harmony with social progress, to make it more reasonable as social necessities and public sentiment have demanded. Ever recognizing that "the matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies," they have conceived theories, invoked doctrines, and inaugurated instrumentalities to relieve the situation. They have carried on judicial legislation from the infancy of the

law in order that it might advance with society. By the adoption of broad and elastic rules of interpretation, they have maintained, in large measure, the supreme law of the land in harmony with national growth; and they have stood as a barrier against the enforcement of capricious and arbitrary laws enacted by the great remedial agency upon which the community now mainly relies.

The history of jurisprudence, as we have seen, finds society, in progressive nations, always in advance of the law. The evolution of law follows, and never precedes, the evolution of society. Solon declared he gave the Athenians the only laws they were fitted to receive. Nor can the law arrest social progress, though it may temporarily retard it. The great forces which govern and give direction to the life of a people lie beyond the control of legal rules. The law must accept the situation. It can only strive to make its rules conform to social conditions. It can only "move towards existing conceptions of right, justice, humanity, reason, and public policy." Nor can the law materially change actual conditions. It is impossible to legislate society into righteousness, justice, or freedom. It took a hundred years for the Norman kings to force the feudal system upon England; and at the end of that long conflict the great body of ancient customs and usages which were congenial to the English people remained undisturbed. Commerce

and inventions have brought mankind in closer touch than ever before. We hope that war in time will cease; but it must not be forgotten that arbitration will not become an enforceable canon of international law until the great mass of the civilized people of the world believe in and desire that method of settling controversies between nations.

The purpose and end of law are the welfare of society and the happiness of the people. The law should always be viewed from the standpoint of society, and not from the standpoint of the law itself. Society is entitled to have such laws as it desires, and it will obey none other. The law is made for society, and not society for the law. The interests of society are primary; the interests of the law secondary. Society is the master, and the law its handmaid. The law must march with society; the Constitution must march with the nation.

In our day and generation we are confronted with the same problem of adapting the old rules of law to the new facts of life; of keeping them in accord with commercial and industrial growth and national development. There is no way of making the law sufficiently elastic and mutable to meet fully the ever-varying wants of society in the presence of an expanding civilization. Our duty lies in the effort to make it, as far as possible, fit and suitable to new conditions as they present themselves.

Almost every important case covers a group of facts which are different from any other recorded case. Analogies, settled principles, cases nearly similar, may help, but they neither satisfy the mind nor meet the real issue. If it be a constitutional question, there are probably included in that group new facts or circumstances which represent national growth and changed social relations. These are the important things to consider in reaching a proper conclusion, if the law is to be kept in harmony with civilization.

So, too, a case may arise which includes in its group of facts new commercial or industrial conditions. In the determination of such a case society demands that these new elements receive recognition, that the law may conform to the actual business of life.

It is by grappling with the great living realities that legal conclusions are reached which meet social necessities. Laws should be interpreted and decisions rendered in the spirit of the present, not of the past. Logic and due regard for precedent should be combined with the statesman's breadth of vision. Consistency may be extended too far; it is sometimes a doubtful virtue. Had Jefferson been consistent, we should have lost the Louisiana purchase. Had Lincoln been consistent, slavery would not have been abolished. The obligation we owe is not to the past, but to the present. Ancient civilization looked to the

past; Christian civilization looks to the future. The ancient idea of a perfect primitive society is a poetic fiction; the modern idea of a society growing more humane, more just, more reasonable, is a reality.

In this spirit let us carry on the work which society has largely committed to our hands. Recognizing the usefulness of legal forms and precedents, may we ever hold fast to the great truth that reason is the life and soul of the law. May we rise to the lofty conceptions of the Law of Nature, — harmony, simplicity, uniformity, — and may we call to our aid her precepts of universal reason; and, extending our vision to law as the order of the universe, may we draw inspiration from Hooker's sublime words: "Her seat is the bosom of God, her voice the harmony of the world, all things in Heaven and Earth do her homage, — the very least as feeling her care, and the greatest as not exempted from her power."

CONTRIBUTIONS OF RHODE ISLAND TO THE AMERICAN UNION

Address delivered at the Louisiana Purchase Exposition at St. Louis on Rhode Island Day, October 5, 1904.

Mr. President, Your Excellency,
Ladies, and Gentlemen:

THE magnitude and character of this commemoration of a national event, next only in importance to the Declaration of Independence, the adoption of the Constitution, and the Civil War, are in harmony with the lofty sentiment which inspired it. Fifteen years after the adoption of the Constitution, the United States acquired the vast domain embraced within the Louisiana Purchase. Under the Federal system then established, this wilderness has been transformed into twelve flourishing States, with a residue of territory soon to become States.

The marvellous spectacle which is here presented is simply the expression in material form of the patriotic gratitude of the great people who now dwell within these boundaries, — gratitude for the providential circumstances which led to the acquisition of this territory, for a form of government under whose

fostering care and protecting arm the people were enabled to organize into self-governing communities and become incorporated into this sisterhood of States; gratitude for the liberty and enlightenment and all the countless blessings which have flowed from a hundred years of membership in the American Union. Surely the grandeur of this celebration rises no higher than the sentiment which gave it birth.

It is the spirit of nationality that pervades and animates this scene. Beneath the energy and daring which converted this tract of forest into a moving world of civilization and art, beneath the magnitude and comprehensiveness of this undertaking and the splendor of its execution, beneath this gathering of nations, States, and congresses, we see only the reflection of the love of America and her institutions.

These structures of imposing architecture, with their wealth of statue and column; these landscapes and gardens, cascades and fountains; this object-lesson of man's handiwork, progress, and achievements; this assemblage of the world's products, processes, and resources, of the best works in every department of human activity, — art, science, invention, industry, agriculture, education, — all these wonderful creations of form and color, harmony and beauty, were conceived in the spirit of patriotism

and dedicated to the education and advancement of all nations, tribes, and races.

In the promotion of material progress, the evolution of new ideas, the elevation of artistic and industrial standards, through this commingling of different peoples in friendly competition; in the portrayal of the steps by which nations may advance through this object-lesson of all grades of civilization; in the attainment of a higher and broader culture through the educational forces which are here gathered; in the unity and coincidence of thought and development of the human race which these exhibits inculcate; in the common brotherhood of man and universal peace of which this Exposition is the exponent and herald, — we behold teachings and results which are in harmony with the lofty conception they represent, — the American Union.

In the making of that Union which inspired this commemoration, Rhode Island has borne a distinguished part. It required two pilgrimages to solve the problem of free government. The compact on board the Mayflower must be supplemented by the compact on the shores of Narragansett Bay, before we reach the foundations on which rests the union of these States. To a democratic theocracy clothed with civil power, Rhode Island added the vital and saving element of untrammelled religious freedom, the absolute separation of Church and State, the

declaration of intellectual liberty of thought and speech in its modern and broadest sense. No Federal Union could have been formed, or, if formed, have long survived, without the introduction into the Constitution of this master principle which Rhode Island, one hundred and fifty years before, incorporated for the first time into a civil government.

Religion was the most potent force which entered into colonial life. It held society together. It shaped the destiny of the people. It was religion that drove our forefathers from England. It was the fear of a church establishment, next to the Stamp Acts, which led to the separation from the mother country. It was the apprehension of the exercise of authority in religious concerns that almost wrecked the Constitution, and its adoption was finally secured only with the understanding that this danger would be speedily removed by amendment.

In the existing religious intolerance and diversity of sects there was an element of disintegration which all the wisdom and statesmanship of the framers could not meet, and which could be overcome only by the recognition of the fundamental truth on which Rhode Island was founded. It requires only the statement to carry conviction that, on any other basis than Rhode Island soul liberty, the attempt would have proved fruitless to unite in Federal bonds the Puritans of Massachusetts, the Quakers of Pennsylvania,

the Catholics of Maryland, the High Churchmen of New York, the Dutch Protestants of New Jersey, the Cavaliers of Virginia, the Huguenots of South Carolina, and the Methodists of Georgia.

The Rhode Island doctrine of religious freedom stands as the first amendment to the Federal Constitution, and is incorporated into the organic law of every State. This is the immortal principle which Rhode Island has added to the structure of our government, to the making of America. In its expansion and irradiation, there is found the cohesive force which has perpetuated this union of States. In the absence of this instrumentality, it would have been impossible to weld together the heterogeneous population of this country, drawn from so many nations and races, differing in language, religion, habit, and political ideas, into one homogeneous Federal Union, one American people. It is not our geographical position, natural resources, distinctions of race, which have made America, for other nations have had similar advantages; but it is the energy, the incentive, the freedom from discord, the desire to know and excel in everything, derived from the intellectual liberty of which Rhode Island was the first example and forerunner. If, in this festival of the world's progress, the achievements, wealth, and power of the United States bear a most favorable comparison with other countries, it is to the great principle which Rhode

Island implanted into our institutions that we must look for the underlying and potent cause.

But what Rhode Island first gave to the world has a deeper and broader significance. Religious liberty was a turning-point in universal history. It was the beginning of modern government. It stands "in the background of every democratic struggle in Europe." Upon the tomb of Jefferson, in the epitaph written by himself, his authorship of "the statute of Virginia for religious freedom," one hundred and fifty years after Roger Williams, is ranked next in importance to his authorship of the Declaration of American Independence. The Columbian Exposition, upon a comparison of the world's achievements, brought in the verdict: "Toleration in religion, the best fruit of the last four centuries." In the presence of the far-reaching and momentous consequences which have flowed from this doctrine of soul liberty, Rhode Island is entitled to high distinction among her sister States, and her founder to the imperishable honor, admiration, and gratitude of all mankind.

There is another doctrine, first promulgated by Rhode Island, which has proved important to the stability of the American Union. The novel constructive feature which the framers added to the science of government, and embodied in the Constitution, was the judiciary. The keystone of this branch of the government resides in the power of the Supreme Court

to declare what the organic law is, and thus to hold in check legislative omnipotence. This power finds expression in the doctrine that the Supreme Court may declare unconstitutional and void an act of the legislature. Seventeen years before Marshall, in *Marbury* v. *Madison*, established this doctrine, the same principle was, for the first time, enunciated by the Superior Court of Rhode Island in *Trevett* v. *Weeden;* and the reasoning of Varnum, in his masterly argument in support of this judicial prerogative, is closely followed by Marshall in his opinion. It is also an interesting circumstance which may be noticed in this connection, that in 1639 the town of Portsmouth appointed a court with a jury of twelve men "to doo right betwixt man and man" — the first act known to colonial history which separated the judicial from the executive and legislative branches of the government.

But the contributions of Rhode Island to the American Union are of wider import. Roger Williams was the first modern statesman, and Rhode Island was the first modern democracy. She was more than a century in advance of her time. For her early government there was no precedent. It was a novel experiment, — an anomaly in history. The ablest statesmen and scholars of the time declared that such institutions were subversive of social order. The principles on which Rhode Island was founded have become the cardinal principles of free

government. She gave these principles to our political system, since she was the earliest to incorporate them into a civil compact.

Rhode Island was founded upon self-government, religious freedom, human equality, and justice. Denying the power of the Crown to confer sovereignty by right of discovery, she derived title to her territory by direct purchase from the Indians, by the deed of submission of the great sachems in 1643, transferring the jurisdiction over the Narragansett lands to the King of England, and by the King's confirmation of title in the colonists by the charter of 1663.

The Providence compact of 1637, in which the inhabitants submitted themselves to a government "only in civil things," is the earliest written instrument of a free government. It was a government limited to civil powers vested in the body of freemen upon terms of absolute equality. The code of 1647, adopted by the General Assembly of all the people upon the union of the towns for mutual protection under the first charter, in its declaration of the principles of a free government, its bill of rights, its humane spirit, its comprehensiveness, boldness, and simplicity, anticipated by more than a century the legislation of the other colonies. Here was laid down, for the first time, the fundamental doctrine which is subsequently found in the

Declaration of Independence, and which has become the basic tenet of democratic institutions, — that government rests upon the "free and voluntary consent of all or the greater part of the free inhabitants." It contained provisions for referring all laws back to the people for confirmation or rejection. It was declared to be "a wholesome liberty for the whole or major parte of the free inhabitants to consider laws made by the Commissioners' Courts; and upon finding discommodity in any law made by the sayd Courts, then orderly to show their dislike, and so to invalidate such law." We have here the first example in this country of a Federal Union. It was composed of independent towns. We have here, also, the first example of the modern doctrine of referendum, which was called a "wholesome liberty."

These novel and advanced doctrines led the historian Bancroft to observe with truth: "Had the territory of the State corresponded with the importance and singularity of the principles of its early existence, the world would have been filled with wonder at the phenomena of its history." If our Federal Union has been perpetuated for more than a century through the breadth of its liberty and the discipline of its people in the art of self-government, then Rhode Island should be accorded special recognition on this day for the "lively experiment" she inaugurated on the shores of Narragansett Bay one

hundred and fifty years before the adoption of the Federal Constitution.

The great preparatory step to the formation of the Federal Union was the Revolutionary War. In the events which led to that war and its successful termination, Rhode Island took a leading part. Her practical independence of the Crown and her early institutions had bred an intensely democratic spirit. She was foremost in resisting the encroachments of the mother country and in her assertion of complete independence. Two months before the Declaration of Independence, Rhode Island severed her allegiance to the British Crown. She was the first sovereign State. Her opposition to the Stamp Acts was the earliest and most violent. She committed the first overt act of resistance. She shed the first blood of the Revolution in the capture and burning of the Gaspee. Her privateers, manned by her intrepid seamen, were the scourge of British commerce. Her subscriptions to the Continental loans were, relatively to her population and wealth, far in excess of those of any other Colony. She was the first State to take formal action respecting a Continental Congress, and the first to elect delegates. Six months before Patrick Henry exclaimed in the Virginia Convention, "The war is inevitable — and let it come," Stephen Hopkins of Rhode Island declared in the first Continental Congress, which

sought only "a redress of grievances" by petition: "Powder and ball will decide this question, and any of you who cannot bring your minds to this mode of adjusting the question had better retire in time." It was through the efforts of Rhode Island that the Continental Congress passed the first act creating an American navy, and its command was placed in the hands of a Rhode Island officer. At the close of the Revolutionary War General Greene ranked next to Washington. It was one Rhode Island Commodore Perry who, after the Battle of Lake Erie, wrote those words which have since become the inspiration and motto of the American navy: "We have met the enemy, and they are ours." It was another Rhode Island Commodore Perry who carried western civilization to Japan.

It is not strange that Rhode Island deliberated longer than the other States before adopting the Federal Constitution, in the absence from that instrument of a bill of rights securing the personal liberty for which she had ever struggled, and which was the corner-stone of her institutions. If she hesitated, something must be pardoned to the spirit of liberty. It should also be borne in mind that ratification was secured in many of the States only by slender majorities, and with the understanding that the first ten amendments would be speedily adopted. Since her admission, no other State has shown a greater

devotion to the Union, nor a loftier patriotism in the hour of trial.

There are other features in Rhode Island's history which closely touch the life and well-being of the nation. It was commerce and the necessity of its regulation which led to the adoption of the Federal Constitution. Since the adoption, the unifying influences of commerce, trade, and manufactures have promoted a national spirit, cemented the bonds of union, and made us one people. In commerce and manufactures Rhode Island is pre-eminently distinguished. The sea loves freedom, and freedom loves the sea. Her geographical features, combined with her democratic institutions, shaped and controlled the activities of her people. They fostered a commercial spirit, and her beautiful bay invited the commerce of the world. They bred a sturdy, independent, enterprising, seafaring race, with the liberal spirit and hospitality which are born of the sea. In the French and Spanish wars her privateers swept the main, and her annals are full of daring deeds. At the close of the eighteenth century the sails of her merchantmen whitened every ocean, and her merchant princes brought riches and culture to the State. When her commerce was destroyed by forces beyond her control, she turned with the same enterprising spirit to her rivers and waterfalls for the development of manufactures. From a race of

ship-builders and merchants, she became a race of mill-builders and manufacturers. In the person of Samuel Slater she founded the cotton industry of the country. She is the birthplace and home of American manufactures. From the feeblest of the Colonies and the smallest in territory, she has become relatively the greatest State in population and wealth. Within her borders are found all the elements which enter into a free, enlightened, and prosperous commonwealth. She stands in the front rank of progress, not alone in material things, but in those which are higher, — the liberal spirit, hospitality, and culture of her people. In the industrial and mechanical arts, in invention, in the skill of her artisans, she takes a leading position. In the fashioning of silver and gold she is unexcelled. In the manufacture of cotton, wool, machinery, tools, and other products, she has few rivals. In full sympathy and accord with the sentiment which inspired this Exposition, and with its aim and purpose, she has brought here her best works in the industrial arts and other exhibits of a higher character, illustrative of many phases of the life of her people and the lines along which they have travelled in reaching their present high plane of development. But the noblest exhibit which Rhode Island brings to this commemoration of a century of membership in the American Union is her history.

This Federal Union has stood for one hundred and fifteen years. It has surmounted the gravest peril to which it was exposed, — a disputed sovereignty. It has proved to be the highest and most perfect form of government. It combines the power and strength of a great nation with local self-government and the largest liberty. It has the capacity of assimilating many different races, and moulding them into one homogeneous people. It has added State after State to the Union, and its territory now stretches from ocean to ocean and to possessions beyond. It has demonstrated the adaptability of a Federal system to extend over a continent; and in the union of these imperial commonwealths it has afforded a model and a precedent for the federation of the world.

The era of constructive government has passed. The struggles of our fathers have ended. Independence, liberty, and a stable Federal compact are accomplished facts. We are a nation in all things which concern the general welfare, while the individual is protected by the organic law which covers every known personal right. The system has been perfected. The structure is complete. Our continued safety no longer lies in adding to or changing the framework of our government. It is not the American Union or democracy which is now on trial, but the American people.

The grave questions which confront society to-day are economic and industrial rather than political. They involve the regulation and equalization of social conditions. These issues lie outside of legislation. They rest in the domain of morals. Government and laws have their limitations. They cannot make wealth without labor. They cannot make men of equal capacity and energy. If these questions seem insoluble, if the outlook at times appears dark, let us take courage and inspiration from the seemingly insurmountable obstacles which our fathers overcame in the making of the nation. Let the mind run back to the midnight winter of Valley Forge; to the hour when the Constitution hung trembling in the balance; to the time when brother and brother throughout the land were divided into hostile camps.

Deeper than the logic of the rights of capital and labor, deeper than the academic discussion of individualism and socialism, the solution of these questions will be found in the broad humanity, the sense of fairness and justice, of the American people; just as, in the building of the nation, we discovered that beneath the logic of constitutional sovereignty, beneath the final analysis of political issues, our safety lay in the intelligent judgment and sound sense of the great body of the people.

The same broad and liberal spirit that made us a nation must be directed to the social and industrial

problems of the time. As it was the spirit of national unity that built up the Union, so it will be the spirit of humanity which will preserve society. As the nation is one and indivisible, so the whole people are one and indivisible. The well-being of the entire community is inseparable from the well-being of each individual of which it is composed. All classes are indissolubly bound together. When we fail to realize this truth, we become un-American, — a class apart. Our destiny lies hidden in the spirit which teaches that we cannot be of the rich unless we are of the poor, we cannot be of the capitalist unless we are of the wageworker, we cannot be of the North unless we are of the South, we cannot be of America unless we are of the world. This is the true American spirit which made the nation and will transmit it to our posterity. This is the realization of the great lesson which this Exposition inculcates, — the unity of the human race and the ties which bind us to all mankind.

AMERICA'S SOLUTION OF THE PROBLEM OF GOVERNMENT

Fourth of July Oration delivered in Faneuil Hall before the City Council and Citizens of Boston at the Celebration of the One Hundred and Twenty-ninth Anniversary of the Independence of the United States, July 4, 1905.

MR. MAYOR AND FELLOW CITIZENS:

ON the Fourth of July, 1776, our fathers ceased to be colonists of Britain, and became an independent people. On that day the representatives of the United States of America in General Congress assembled, at the City of Philadelphia, declared that the thirteen united Colonies possessed "full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

On that day, upon a new continent, and upon a magnitude hitherto unknown, was begun, in the words of Bryce, "the most remarkable experiment in government the world has yet witnessed."

The history of mankind for three thousand years pointed against the success of this experiment. The teachings of philosophers and statesmen of all ages

foretold its failure. Many of our own great leaders were distrustful of the result.

One hundred and twenty-nine years have passed since that eventful scene in Independence Hall, and lo! we now behold, as the outcome of this experiment, the fairest picture of government which ever met the eye of man. Oh, that the great patriots of this storm-centre of Revolution might look down upon this scene! Would that the heroic band who signed the Declaration might gaze upon their country to-day! Would that all the great founders of the Republic might behold this United States of America on this Fourth of July, 1905!

Imagine the "transports of enthusiasm" of John Adams, as, through "the rays of ravishing light and glory," he finds his prophecy fulfilled a thousand fold. Picture to yourselves the thoughts of Otis — that "flame of fire" in whom "Independence was born" — as he perceives the "liberties" which the people here enjoy! Call to your minds, as he looks upon this wonderful progress of American freedom, the joyous emotions of that proscribed and inflexible patriot statesman, Samuel Adams, whom no fear of death could induce "to abandon the righteous cause of his country." Think of the exaltation of John Hancock, could he look down upon us in this hour — he who put the question, "Shall the Declaration be adopted?" and who, at the risk of life and fortune,

affixed his imperishable signature to that Charter of Liberty. With what an overwhelming sense of gratitude would Jefferson witness the triumph of the immortal principles of the Declaration in the New World, and their seemingly rapid conquest of the Old! What feelings of proud satisfaction would fill the lofty soul of Hamilton as he surveys the stability, the elasticity, and the reserved strength of the Constitution after the lapse of more than a hundred years! Conceive the joy of Franklin as he realizes the commanding position of the United States among the nations of the earth, and those splendid achievements of American diplomacy which are fast making this country the arbiter of the peace and destinies of the world! And last, and greatest of all, let us contemplate Washington as he gazes upon the power, the renown, and the grandeur of his country to-day, and contrasts it with the America of the Revolution, or the America as it last met his mortal vision, — a peaceful, prosperous, progressive, law-abiding, enlightened democracy of eighty millions of people, extending under the Federal Constitution over a continental area, embracing forty-five great States and island possessions which circle half the globe!

On this anniversary of the nation's birth we may well ask ourselves what is the cause of all this — what is the explanation of this American phenomenon in government which has so astonished the world, and

upset all the teachings and predictions of European thinkers and statesmen? How has it happened that the United States, in a manner and upon a scale hitherto unknown, has solved this problem of government, — the most difficult and complex of all human problems, and yet the most momentous, since upon the institutions of a country depend the well-being and happiness of the people? There must be some explanation, some underlying cause. Two powerful nations, one in the Old World and the other in the New, occupying immense tracts of territory, started together more than a century ago to solve, upon a vast scale, the problem of government. Why has Russia failed and America succeeded? Has this country discovered a new brand of government as well as of diplomacy?

The solution of this problem becomes the more remarkable when we reflect that the United States has apparently disregarded, in the structure of its government, every previously recognized canon of stability and unity. It has ignored the strength and personal loyalty of monarchy, the wisdom and conservatism of aristocracy. It has not depended upon the superior knowledge, experience, and leisure of any class. It has taken, historically speaking, the two weakest forms of government, and created the strongest political organization in the history of mankind. Philosophers have ever told us that a democracy is fickle, short-

lived, and generally corrupt and tyrannical. They have also said that a Federal Union, from its inherent nature, is the most complex, delicate, and unstable form of government known. Disregarding all these admonitions, the American people have adopted both these political systems. Here is exhibited in its purest form, compatible with the representative system, a democracy, a government by the people, self-government. Here also is exhibited a Federal Union in its most perfect form and upon a vast magnitude. How has it come to pass that we have made democracy a success, a Federal system a success — liberty, equality, fraternity, a success — with all the countless blessings which have come to the people from these political conditions? What seed has been planted in these institutions which has brought forth such splendid fruit? What new principle in government has America discovered which will explain her wonderful progress, her unity, and her strength? How has it happened that the United States has emerged from every great national crisis stronger, wiser, and more confident? What is the cohesive force in these institutions which has enabled them to withstand the shock of civil war, the freeing of four millions of slaves, a disputed Presidential succession, and every peril to which the country has been exposed? To what unifying influence in our form of government can be ascribed the power of assimilating and moulding into one homo-

geneous people the multitude of new-comers from other lands, of different nationalities and traditions, who have made America their home? Why is it, if by chance they revisit their native land, they return to America with increased love for this country, and that they and their descendants are not excelled in devotion and loyalty to American institutions? How has it come to pass that American diplomacy is conquering the world, and that to-day the Great Powers are looking to us as the only hope of peace?

During the past century the map of Europe has changed. Dynasties have been overthrown; new governments have arisen. There is no European country at the present time in which there does not exist an organized party in favor of a change in the form of the government or in some of its organic features. What is the potent cause which has maintained unimpaired American institutions, and which has instilled into every American his absolute, unquestioned faith in the government of his country and in her future high destiny? Whence has sprung that supreme trust in the American people which sustained Washington through the doubt and gloom of the Revolution, and which upheld and comforted Lincoln during the darkest hours of the Civil War?

From the Declaration of Independence down to a comparatively recent period, and especially at every critical stage in our progress, the world has been

filled with prophets of evil omen. De Tocqueville, seventy years ago, foretold our decline, if not our downfall, through the tyranny of the majority. Macaulay was filled with the most gloomy forebodings respecting the future of American institutions, although he was good enough to postpone the time when his New Zealander should sketch the ruins of the Capitol at Washington. "I have long been convinced," he said, "that institutions purely democratic must, sooner or later, destroy liberty or civilization, or both." "Your fate I believe to be certain, though it is deferred by a physical cause." "Your Constitution is all sail and no anchor." "When a society has entered on this downward progress, either civilization or liberty must perish. Either some Cæsar or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth, with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your own country by your own institutions." The historian Freeman prophesied the exchange of ambassadors between the North and the South before the year 1869. The publicists and statesmen of Europe foretold the dissolution of the Federal Union before

the Civil War. They were also convinced beyond doubt that the North would never succeed in that war, and, after the close, they were equally certain that the Union was irretrievably wrecked, and that the South would come back as conquered provinces under some new and stronger form of government.

Why has our experience refuted these predictions? Why have all the prophets proved to be false prophets? The circumstances surrounding the settlement of our forefathers in this country do not afford an adequate explanation. These results cannot be accounted for by the prodigality of nature as exhibited in land and forest and mine, nor by our freedom from powerful and aggressive surrounding nations. Nor can they be accounted for by reason of race temperament or character. Nor can they be explained upon the theory that our forefathers brought with them the town meeting, the Magna Charta, and the Bill of Rights, and left behind them the mediæval institutions of Europe. While these auspicious conditions may have exerted a powerful influence, they present at the most only a partial explanation of our remarkable history. The true explanation, the real solution of the problem, must be sought for in some more comprehensive and fundamental cause.

America's solution of the great problem of government, the explanation of this American phenomenon,

is found in the plain wisdom of the plain people. It has its origin in the mind and conscience of the great body of citizens, in their honesty, intelligence, and fair-mindedness, in their practical judgment and sense of what is proper and right. It is based upon the utilization of the common sense of the average man, or the collective common sense of the multitude of average men, as the active, controlling force in government. It is, in its essence, simply the town-meeting principle of government extended over a vast empire. In this common-sense principle of government, which is merely the expression of the plain wisdom of the plain people, lies the key, the only key, which unlocks the remarkable development and achievements of American civilization during the past century.

There are certain inborn qualities which are the common heritage of mankind. The human race is endowed by nature with common sense, natural understanding, practical judgment, a sense of what is just and right. These qualities are distinct from the endowments of genius or the acquisitions of learning. They are unaffected by logical abstractions or the imagination. They are unaided by any art, method, or system of rules. They are developed and strengthened by the common every-day experiences in life and in business. It is these qualities of common wisdom which enter into, direct, and

control the judgment of the average man and the collective judgment of the mass of average men. In the sphere of government, these qualities are further aided in their exercise by local self-government, by free discussion, and by a system of primary education.

The great truths of the Declaration — "That all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed" — appeal to these natural qualities in man. The great principles of peace, humanity, charity, the common brotherhood of man, appeal to the same inborn qualities.

Hitherto governments have suppressed these natural qualities in mankind. The practical wisdom and good sense of the average citizen, or the mass of average citizens, have never been recognized as the active controlling force in the State. Governments have hitherto proceeded on the theory that it was necessary to have a governing class who were specially qualified, by reason of superior knowledge and experience, to manage public affairs. The result has been that society has almost universally accepted some form of autocratic or class government — the rule of a king or of an aristocracy — as the lesser

evil. The ability of the people to govern themselves was denied. It was not believed that any such governing faculty was born in man. No confidence was placed in the common sense of the great body of citizens as the ruling power. Liberty and self-government were denied mankind because it was thought that these privileges were subversive of civil order.

For the first time in the history of the world, the United States has availed itself of the plain wisdom of the plain people, of the sense and conscience of the average man, or, more properly speaking, of the mass of average men, as the ruling force in the State. Never before has government relied upon these natural qualities as the ultimate and the controlling power in public affairs. This is America's discovery. This is her gift to humanity and to civilization. She has made known man's capacity for self-government, and this is her crowning glory.

It is true that there have been some previous examples of popular governments, notably in ancient Greece and in mediæval Italy; but these attempts at self-government were made under adverse circumstances and upon a small scale. This American theory has never before been fully tried under favorable surroundings, and upon a national scale. Here the soil was well prepared. "God had sifted three

kingdoms to find the wheat for this planting." The country was new, of vast extent, and of unsurpassed natural resources. The wide ocean separated this continent from the powerful nations of the Old World. Our fathers had brought with them local self-government and the fundamental principles of personal liberty. It thus appears that, notwithstanding these former examples of popular government, the United States for the first time has really afforded the proper opportunity for the common people to test their ability to govern themselves, and that we were the first to discover and utilize this common-sense principle of government, founded upon the judgment of the mass of citizens, and to make it the active and controlling governing power.

In the progress of American institutions, this new governing force, resting on the general sense of the body of citizens, has become all-powerful — the absolute master of the State. It has supplanted the true function of the representative system, and dominates the whole machinery of government. Executives and legislatures bow before this voice of the people. It fears nothing. It seeks only to do what is proper and right. We call it public opinion. It began to assert itself at an early period. John Adams relates that for some time the vote of the Convention was constantly against the passage of the Declaration. "For many days," he says, "the majority depended

on Mr. Hewes of North Carolina. While a member one day was reading documents to prove that public opinion was in favor of the measure, Mr. Hewes suddenly started upright, and lifting up both hands to heaven, as if in a trance, cried out: 'It is done, and I will abide by it!'" Our recent history affords startling illustrations of its irresistible power. In other countries, like England and France, where liberal institutions exist, the people are satisfied with electing their agents to carry on the government. This is not the case in the United States. Here public officers are and remain the servants of the people, to execute at all times their sovereign will.

This striking phase in the development of our institutions has been pointed out recently by Bryce, in his "American Commonwealth." Speaking of public opinion, he says:

"It stands above parties, being cooler and larger minded than they are; it awes party leaders, and holds in check party organizations. No one ventures openly to oppose it. It determines the duration and the character of national policy. . . . It is the central point of the whole American policy. . . . It may sometimes be long in speaking, but when it speaks, it speaks with a weight which the wisest governing class cannot claim. . . . It grows up, not in Congress, not in State legislatures, not in those great conventions which frame platforms and choose

candidates, but at large among the people. It is expressed in voices everywhere. It rules as a pervading, impalpable power, like the ether which passes through all things. It binds all the parts of the complicated system together, and gives them whatever unity of aim and action they possess." "Towering over Presidents and State governors, over Congress and State legislatures, over conventions and the vast machinery of party, public opinion stands out in the United States as the great source of power, the master of servants who tremble before it."

Our whole history illustrates the soundness of this new governing force; in other words, that the practical judgment of the mass of citizens has been wise and right. The Declaration of Independence was no sudden nor hasty act. The people had petitioned, and petitioned in vain, for the redress of grievances. They were driven to independence only after repeated acts of oppression, and as a last resort. And with independence the people saw the practical necessity of a closer union of the Colonies. Independence and union were always associated together in the popular mind. When the Articles of Confederation proved too weak for practical governing purposes, a stronger union was entered into under the Federal Constitution. Unfortunately, there grew up under this Constitution two opposing, irreconcilable social

systems. Seeking to avoid the inevitable conflict between freedom and slavery, the people for forty years tried compromise after compromise. But when the hour of battle came they rose in their supreme power and declared: "We join ourselves to no party that does not carry the flag and keep step to the music of the Union." The theoretical argument of State sovereignty, founded upon the nature of a Federal compact, the practical judgment of the people rejected. The so-called invincible logic of Calhoun made little impression on the popular mind. The plain sense of the plain people revolted against the idea of a dismemberment of the Union. Here was a land designed by nature for the occupancy of one people, whose great waterways, mountains, and plains must not be divided between two or more independent nations. One people had subdued this wilderness. One people had fought the War of the Revolution, and established the Constitution, — a people made one by a common lineage, a common language, a common history, common struggles, common sacrifices, common institutions, and a common religion. There was no answer in the minds of the people to these practical arguments, and the Civil War was carried on until the Union was restored. To the success of that war it became indispensable to clothe the President with almost autocratic powers; and the good sense of the people

responded to this situation by declaring that the Federal Constitution must be made elastic enough to save the country.

The weakest spot in a Federal system of government, outside of the doctrine of State sovereignty, is the election of the Chief Executive. There was no constitutional way for meeting the disputed Presidential election of 1876; but the people insisted that this crisis must be met in a peaceful way, even though means were provided outside the boundaries of the organic law. Disputed successions have caused numerous long and bloody wars in the monarchies of the Old World. The approval of the Electoral Commission and the endorsement of its decision is one of the strongest illustrations of the practical wisdom of the people as the ruling force in government.

In the events preceding the Spanish War, the popular mind, although wrought up to the highest tension, acted with the utmost calmness, and war was not declared until it was demanded by the dictates of humanity as well as national honor.

While the general sense of the people has always been right with respect to broad questions of public policy, it may be claimed that this is hardly true concerning comparatively minor issues. I maintain, however, that on questions like the tariff, the currency, civil service reform, and all questions which relate to

the administration of government, the judgment of the masses has been equally wise. It may take a longer discussion of these more difficult and complex subjects before the popular mind reaches a full and intelligent understanding of them, and there may be temporary setbacks; but our experience in every case shows that in the end the decision of the people has been right.

The same common sense which has characterized the rule of the people has also guided our great statesmen in the construction of the machinery of government, in the interpretation of the Constitution, in our foreign relations, and in the critical periods of the nation's history.

The framers of the Constitution were men of strong common sense and practical wisdom. They were neither dreamers nor theorists nor revolutionists. They sought to solve the great problem of the hour by rational means. The logic of the situation demanded some kind of Federal Union. This was the only form of government adapted to thirteen independent States. They set about to form such a political system by remedying what experience had taught them were the defects in the old Articles of Confederation. They cured these evils by making the new Constitution bear directly upon the people instead of upon the States, by granting certain general powers to Congress, such as the regulation of commerce, by

the establishment of the Federal Judiciary, and by other changes. They also reconciled by compromise or elimination conflicting interests and jealousies. So successful were their efforts that Gladstone has declared that "The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

In the construction of the Constitution the Supreme Court have ever been guided by practical wisdom rather than abstract theory. They have interpreted that instrument to meet the wants and necessities of a great and progressive people, who were extending over a new continent, and whose social needs and national aspirations were constantly changing. They have applied to its provisions the great doctrine of reasonableness. They have placed a liberal construction upon its general powers when a national exigency demanded it. When it became absolutely vital to the safety of the Republic, during the Civil War, to issue paper money as a legal tender, the court sustained the constitutionality of the act, as coming within the implied powers of the Constitution, although the direct grant of such a power in the body of the instrument had been expressly excluded by the framers. Listen to the common-sense view of Mr. Justice Miller on this subject:

"The coin in the country, if it could all have been placed within the control of the Secretary of the

Treasury, would not have made a circulation sufficient to answer army purchases and army payments, to say nothing of the ordinary business of the country. A general collapse of credit, of payment, and of business seemed inevitable, in which faith in the ability of the government would have been destroyed, the rebellion would have triumphed, the States would have been left divided, and the people impoverished. The National Government would have perished, and, with it, the Constitution which we are now called upon to construe with such nice and critical accuracy."

The history of American diplomacy affords a most striking example of this common-sense principle of government and of its power and effectiveness. The secrecy, subtlety, and reserve which characterize the diplomacy of the Old World have been abandoned. Our intercourse with foreign nations is marked by openness, directness, simplicity, while observant of all customary proprieties and courtesies. It has been distinguished by an honesty of purpose and a high moral tone. It has also been pacific, humane, and conducted with due recognition of the rights of others. Its triumphs of the past few years in the far East and elsewhere, and notably in the recent action of President Roosevelt, have placed the United States in the very front rank among the Great Powers of the World. America has become the peacemaker of nations.

There are also numerous instances of the exercise

of the same qualities of plain wisdom and good sense by our great leaders in critical periods of the nation's history. What more sublime act of practical wisdom has the world witnessed than the conduct of Washington at the close of the Revolutionary War and at the head of a victorious army? Casting aside personal ambition and the machinations of designing men, he journeyed to Annapolis, and, entering the Hall of Congress, took the seat assigned him. The presiding officer then declared that "the United States in Congress assembled were prepared to receive his communication." Rising from his seat with a majesty and dignity beyond that of any crowned king, Washington, in his most impressive manner, said:

"The great events on which my resignation depended having at length taken place, I now have the honor of offering my sincere congratulations to Congress, and of presenting myself before them, to surrender into their hands the trust committed to me, and to claim the indulgence of retiring from the service of my country."

Turn to another instance of the highest practical wisdom by the author of the Declaration of Independence. Jefferson had grave doubts of the power of the United States, under the Constitution, to acquire the vast territory covered by the Louisiana Purchase. "If, however," he wrote, "our friends shall think differently, certainly I shall acquiesce with satisfaction,

confident that the good sense of our country will correct the evil of construction when it shall produce ill effect." Waiving his scruples as to the constitutionality of the measure, trusting to the good sense of the people to correct the evil, if it should prove to be such, and in obedience to the popular mandate, Jefferson took advantage of this golden opportunity, which, in the words of Grover Cleveland, "doubled the area of the young American nation, and dedicated a new and wide domain to American progress and achievement."

In the construction of the Constitution, John Marshall disdained all theories and abstractions. He cared nothing for the doctrine that a Federal Union is a mere league of sovereign States, that theoretically there can be no such thing as a sovereign over sovereigns, that theoretically a sovereign State may annul any act of the central power and withdraw from the voluntary compact whenever it deems it expedient so to do. On the contrary, he declared that the Constitution must be made to fulfil the great practical purposes for which it was designed. The Constitution was ordained by the people as the paramount law of the land, supreme over Congress and State legislatures. It organized a government complete within itself. It established a perpetual Union, and safeguarded the rights of the people. It was not "a magnificent structure,"

"totally unfit for use," "but a competent guardian of all that is near and dear to us as a nation." It was by the application of these common-sense principles in the construction of the Constitution that Marshall cemented the Union and made us one people.

We may turn for another example to that statesman and martyr President, the product of American institutions, the most American of all Americans, — Abraham Lincoln. Of him it was said: "His was the genius of common sense, — of common sense in action, of common sense in thought, of common sense enriched by experience and unhindered by fear." Lincoln was not only the incarnation of sound sense, but of prophetic vision. He early foresaw that the Union would be preserved and slavery abolished: "A house divided against itself cannot stand. I believe this government cannot endure permanently half free and half slave. I do not expect the Union to be dissolved; I do not expect the house to fall, but I do expect it will cease to be divided." The war came. Its primary object was to save the Union; but imbedded in that issue was slavery, — the most perplexing and seemingly insoluble problem of the time. Lincoln was convinced that slavery could not be abolished under the Constitution except as a war measure, and that it would be fatal to

the cause to precipitate action before the time was ripe. He managed this situation with consummate tact and skill. No solicitation, no vituperation, could hasten his action on this momentous issue. On August 23, 1863, he wrote Horace Greeley: "I would save the Union, I would save it the shortest way under the Constitution. . . . If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause, and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors, and I shall adopt new views as fast as they shall appear to be true views."

At the time this letter was penned, Lincoln had already made a draft of the Emancipation Proclamation; but in his judgment the time had not yet arrived for its promulgation. The aspect of the war soon changed, and the proclamation followed. With what simplicity, power, and beauty did he define his position, and the ground on which he justified his action in this lofty closing passage: "And upon this act, seriously believed to be an act of justice,

warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God." It was Lincoln's practical judgment in the supreme crisis of the nation's history which maintained the Union and abolished slavery.

It has sometimes happened that the judgment of the people has been wiser than the judgment of their great leaders. Recall the movement by prominent members of his own party to force Lincoln to withdraw or resign, after his renomination in June, 1864, and how, in this dark hour of the Republic, the plain people, rising in their might, said: "No, this is our President. He sprang from our loins, he is confronted with the most difficult task which ever fell to mortal man; but if any one can save the Union and end this dreadful war, he can; we trust him, we believe in him, we love him." The people then saw what the whole world soon acknowledged, — that Abraham Lincoln was the master spirit; that his grasp of the situation and knowledge of men were unexcelled; that beneath that tall, gaunt frame, that unconventionalism, that homeliness of manner, tinged at all times with a weird melancholy, if not despair, there lay hidden the most gentle, the most heroic, the grandest soul in American history.

They tell us that Americans are becoming fatalists; that this is manifested in our belief in the "divine

mission of the Republic," in our faith that God has chosen this nation to work out, under His protecting hand and for all humanity, a higher type of civilization, in the conviction that the Federal Constitution is the very Ark of the Covenant "whereon no man may lay rash hands," and in our intense confidence in the soundness of our institutions and the future of our country. Be it so! We do not wonder at the charge. The success of this experiment in government is the marvel of history. This rule of the people has brought forth a political and social organization of which the world never dreamed. Here are exhibited political institutions which have shown a stability and at the same time an elasticity beyond those of any other form of government.

Here is a society which possesses all the elements of the highest civilization and progress. Look for a moment at this country to-day from an educational and religious point of view, as seen by two pre-eminent scholars and thinkers, one an Englishman and the other an American. James Bryce says: "There has been within these last thirty-five years a development of the higher education in the United States perhaps without a parallel in the world."

Charles W. Eliot says: "The successful establishment and support of religious institutions — churches, seminaries, and religious charities — upon a purely voluntary system, is an unprecedented achievement of

the American democracy. . . . A similar exhibition of diffused mental and moral energy has accompanied the establishment and the development of a system of higher instruction in the United States, with no inheritance of monastic endowments, and no gifts from royal or ecclesiastical personages disposing of great resources derived from the State, and with but scanty help from the public purse. . . . The endowment of institutions of education, including libraries and museums, by private persons in the United States is a phenomenon without precedent or parallel, and is a legitimate effect of democratic institutions. Under a tyranny — were it that of a Marcus Aurelius — or an oligarchy — were it as enlightened as that which now rules Germany — such a phenomenon would be simply impossible."

But the most remarkable feature of this American democracy is its mighty reserve power. It is "the people's government, made for the people, made by the people, and answerable to the people." Each citizen is a ruler of the Republic, a participator in its greatness and its glory, its joys and its sorrows. He knows that its fame and power rest on his own exertions. He realizes that he is a citizen of a vast country which stretches across a continent. He recognizes the strength and excellence of popular government, because he is one of the people. He makes a rigid Constitution elastic whenever it obstructs the progress

or endangers the safety of the Republic. He feels the sense of personal responsibility which attaches to his own work. He is law-abiding, because he makes the laws and recognizes the necessity of obeying them. He believes in the fullest publicity, a free press, free inquiry, and a full discussion. He believes in equality and a fair field for all. He has faith in the "curative power of freedom." He is conservative in his fundamental beliefs. He has faith in God and in mankind. He has the highest regard for public obligations and the financial standing of the nation. He believes in a state system of primary education. Being fair-minded and temperate, he will not consciously legislate against the rich or the poor. Possessing political power and civil rights, he has nothing to fight for, nothing to rebel against. He is self-confident, self-reliant, and cool-headed. He has the "independence of conscious strength." He is just, and regardful of the equal rights of others. He is opposed to war. He is magnanimous in victory. He is a believer in liberty, humanity, and peace and good-will among the nations of the earth. He is no iconoclast; he believes in building up, and not in tearing down. He cares little for tendencies, theories, or abstractions. He will take a little less individualism or a little more paternalism, a little less protection or a little more free trade, if at any time he thinks it best meets the public wants. He has a large reserve fund of practical wis-

dom. He addresses himself to the questions of the hour. The storms of party passion, the waves of corruption, may beat about him, but he is always conscious of his own supreme power, and that he is the master of the situation. He fears neither discussion nor agitation, socialism nor imperialism. He is himself the dictator, the only Cæsar whom he recognizes. He sits upon the throne. He both reigns and governs. He is the State. He stands for the business judgment of the people as the controlling factor in government. He is the embodiment of common sense brought to bear as the governing force in the State. Herein lies the explanation of the all-subduing power and efficiency of this new force in government. This is the reason why this country has been able to maintain a democratic form of government and a Federal Union for more than a century, to secure liberty and equality for all men, to meet and overcome every national crisis, and to advance step by step to its present position of power and influence among the great nations of history.

Fellow citizens, I believe in this celebration. I believe with John Adams that this anniversary should be forever dedicated to patriotic rejoicings, and where more fittingly than in this temple consecrated for so many generations to human liberty? I believe that on this day every American should bend the knee in devout thankfulness and gratitude to Almighty God

that his lot is cast in this favored land and under the mild sway of these institutions. Fortunate, prosperous, free America! Look in upon the past pages of history. Look out upon the present face of this star, and where will you find such a picture of human society? Cross the Atlantic to the nations of Europe; cross the Pacific to the nations of the Orient; turn to the fairest picture of man in the ancient world, when Rome in the age of the Antonines "comprehended the fairest part of the earth and the most civilized portion of mankind": contrast these pictures of society with the comfort, the well-being, the happiness of the people, which America presents at this hour.

Our political horizon may not be free from clouds. There is no such thing as perfection on earth. Man is an imperfect being, and governments reflect that imperfection. Everything in this world is relative. We can only judge by comparison. We have our problems, but what are they in comparison with those which to-day confront England, France, Germany, Italy, Austria, Russia, and the nations of the far East?

But our problems, it may be said, are serious, and how are they to be solved? My answer is: They are to be solved as the framers solved the problem of the Federal Constitution, as Lincoln solved the problem of emancipation, as Theodore Roosevelt and John Hay are solving the problems of diplomacy, as

the people have solved all the great problems since the Declaration of Independence — by unfettered discussion, by looking at the question from all points of view, by the reconciliation of jealousies and differences, by mutual concession, by compromises, by fairness and honesty of purpose, by a recognition of mutual rights, by forbearance, human sympathy, and charity, and by ever bearing in mind that government has its limitations, that God did not create men of equal capacity and energy, and that nature has decreed that wealth and labor are inseparable.

Fellow citizens, this American Republic is marching to the conquest of the world. Every governmental change in Europe is a change in the direction of American institutions. Monarchy, class-rule, the traditions of the past are crumbling, and States and peoples are drifting towards this American ideal. The benign rays from this new star are spreading hope and rejoicing to all mankind. It is to the West the world is now looking. It is from the West the world is now receiving light. This is the American age. We have discovered the best and the strongest governing force known to man. It is founded upon human nature. It is based on the primal elements of our being. It springs from God Himself. It pleads for the down-trodden and oppressed of all nations, for the abolition of caste and privilege and the mediæval traditions which have held mankind in chains. It

pleads for justice, for charity, for righteousness. This democracy of Washington and Lincoln is carved from the solid granite, and inscribed upon it in letters of gold are the eternal truths: "Peace, Humanity, Liberty."

I have faith in the perpetuity of American institutions; but if in the providence of God it shall ever be our destiny to share the fate of other nations, if it shall ever be found that this government by the people is mortal, if it shall ever come to pass in the far-off time that some future Gibbon shall write the history of The Decline and Fall of the American Republic, — our greatness and our glory will still survive, since we have accomplished a work more sublime than the intellectual beauty of classic Greece, more enduring than the Civil Law of imperial Rome, and grander than all the triumphs of civilization in the modern world; for we have given to humanity and the coming ages the immortal principle that man, made in the image of his Creator, is capable of self-government.